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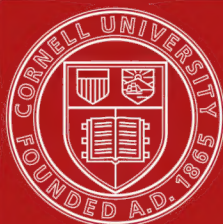
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Testimony taken before the Senate Commit



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# TESTIMONY

TAKEN BEFORE THE

## SENATE COMMITTEE ON BANKS

AND THE

SENATE OF THE STATE OF NEW YORK,

IN REFERENCE TO CHARGES PREFERRED BY

WILLIAM J. BEST,  
RECEIVER, ETC.,

EDWARD MALLON AND JOHN MACK,

AGAINST

DE WITT C. ELLIS,

SUPERINTENDENT OF THE BANKING DEPARTMENT OF THE STATE OF NEW YORK.

ALSO

JOURNAL OF THE SENATE.

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PRINTED UNDER THE DIRECTION OF THE CLERK OF THE SENATE, PURSUANT TO  
RESOLUTION OF THE SENATE, PASSED AT SARATOGA, AUGUST 17, 1877.

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VOL. III.

ALBANY:  
WEED, PARSONS & COMPANY, PRINTERS.  
1878.

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1875 ? A. I have stated the substance of it ; I can't give all the details.

Q. The general nature of your action ; was there any thing, after this deficiency was made good in 1875, as you have stated, down to February, 1877, to call your attention specially to the bank ? A. No, sir ; no special fact that I know of.

Q. Either of its reports or any information from your examiner ? A. No, sir ; I say this : I had great confidence in that bank myself.

Q. And no fact came to your knowledge to change that confidence ? A. No, sir.

Q. This New York Life and Trust Company ; explain what there is of that ? A. That first came under my observation after the passage of the law of 1874, requiring examinations to be made ; the commission is issued in the usual way to the examiner.

Q. Prior to that time it had not been under your supervision and examination ? A. No, sir.

Q. But the law of 1874 required an examination of such trust companies ? A. Yes, sir ; Mr. Reid made his examination and reported to me in the usual way, showing that the capital of this institution —

Q. What is the date of that report ? A. It don't seem to be here ; you will find it in the report of the department.

Q. "February 5 and 6, 1875, examination by Reid, Aldrich and Payne ?" A. That is the examination I refer to ; it was filed in the department, February 18, 1875.

Q. After that report came in, state what your action was ? A. I examined the reports or read his letter, and found an impairment of the capital, as contained in the letter ; the first thing I did was to examine the law and look at the charter, and I found, by an examination of that charter — ; I may state that Mr. Reid's letter spoke of their doing business in a legal manner hereafter, or words to that effect ; they proposed to do business in a legal way is the idea contained ; I read the charter very carefully, and I did not see how they could do business under that charter illegally, no matter what they did, because it contains all the powers that human ingenuity could devise, I think ; it is a very astonishing charter.

Q. That section of the charter is on page 327 of the testimony taken before the committee ? A. Yes, sir.

Q. Proceed ? A. And I found nothing in the charter or in the statute under which this examination was made by which I could call on them, as in the case of banks of discount, to make good that impairment, and could find no law authorizing me to report them to the Attorney-General for impairment of capital.

Q. Did you examine the law in reference to seeing whether it was your duty to report them to the Attorney-General for the impairment

of capital? A. Yes, sir; whether I could call upon them to make up that capital, as in the case of discount banks, and I could find no law, and I do not think there is any law to-day by which I could have done any thing with that institution; that is my judgment; the officers knew of the impairment; it was not a deficiency as in the case of a savings bank, but simply an impairment of the capital.

Q. This institution stood upon a different footing from savings banks? A. Entirely, or any other institution in this State that I know of.

Q. The word that Mr. Reid used was, "there is a disposition now to do a legitimate business?" A. Well, that is it.

Q. Well, when you came to the conclusion you have mentioned, what did you do, if any thing? A. I did not do any thing; I had a talk with one of the trustees; Mr. John V. L. Pruyn, of Albany, I think it was; they understood the condition of the concern as well, or better, than I did; it was only a question with them what they would do about it; whether they would go on and continue in business, or to close up.

Q. What was the nature of the interview with Pruyn, the general nature of it? A. It was in regard to the method of winding it up; the best method of winding it up.

Q. Were you informed by Pruyn that it was the intention of the institution to wind up? A. Yes, sir, at that time when I saw him, they were discussing the proposition of winding it up.

Q. How long after the report was it before this institution went into liquidation? A. I have no knowledge.

Q. That is all you wish to state in regard to that institution, is it? A. Yes, sir; that is all I recollect; the reason I took no action in regard to it was because I could find no law authorizing me or giving me power; nothing except the report.

Q. Now I will call your attention to the Security Savings Bank; you may state your action in relation to that bank; have you papers there connected with it; state when your attention was specially called to the Security Savings Bank? A. That was in the examination of Mr. Reid, or, my impression is, a few days before the examination was made.

Q. Before the examination? A. I think so; I think the examination was made after; well, it was in the fall of 1875, or winter; this seems to be November twenty-seventh; there was a good deal of excitement just then in New York among the banks and "runs," and I think a "run" upon this bank; I think they took a sixty days' notice and then it was that the examination was made; that is my best recollection now, showing a small deficiency; Mr. Reid in his examination

charged the bank with interest due depositors from July to January, and it made a small deficiency in that time; some \$800 or \$900; according to his report, \$890.23.

Q. State what directions you gave, if any, or conversations you had with the officers of the bank? A. I went over to the bank myself; I had an interview with the president once or twice; he contended that the bank was solvent and had a surplus, and that this examination, as Reid made it, was not just.

Q. At what time was that that you went there? A. It was, I think, before this formal examination was put in writing; after they had stopped paying out to depositors and stopped taking deposits; the bank was practically closed for a few days while this examination was made; they had stopped doing business; the president said they did not propose to do any more business until the thing was fully settled.

Q. Settled as to what? A. As to their solvency, he claiming they were solvent, and the report when it was made showing a small deficiency.

Q. What did you require of them? A. I required if they went on, they must make up this small apparent deficiency, and the point then seemed to be whether they would close up or go on; they had stopped practically doing business then; it ended in their never doing any more business but having a receiver appointed; they asked for time to consider the matter and hold meetings of trustees, and see whether they would go on or close up.

Q. It seems from the record it was closed up in the following January by the voluntary action of the officers? A. Yes, sir; I consented to give them all the time they wanted, as long as they were not doing business, to conclude whether they would reorganize and go on or close up.

Q. The bank was closed then by the action of the department? A. Except as in that way as I have stated.

Q. Your requirement of what they must do? A. I didn't make the recommendation to the Attorney-General; they did that themselves; that is, they got the receiver appointed.

Q. The receiver was appointed before the January report came in, it seems? A. Yes, sir.

Q. At the time that you were there in November, '75, can you state what the action of the savings banks of the city of New York about not paying depositors until after the sixty days' notice; was it a general thing with the savings banks or not, at that time? A. A great many of them did take the sixty days' notice as permitted by the by-laws and the statute.

Q. Can you state what the cause, if any cause existed, for that action of the banks? A. Well, I suppose—

Mr. TRACY—Is that any thing but a conjecture? The inquiry is, what was the motive of officers of various savings banks, without asking whether that motive was ever communicated to him.

Mr. MCGUIRE—I don't insist upon the conjecture.

The PRESIDENT—What is the question?

Mr. MCGUIRE—I have asked the witness if he knows of any cause for the action of the savings banks of the city of New York at that time in availing themselves of the sixty days' clause in their by-laws.

The PRESIDENT—Any reason for so doing; general reason?

Mr. MCGUIRE—Yes, sir.

Mr. TRACY—No objection to that.

The WITNESS—After the closing of the Third Avenue Savings Bank, which was the first bank closed, there was a pretty sharp draught made upon a good many of the savings banks in the city, particularly the smaller class of banks; the closing of the Third Avenue Bank was followed by the closing of several others that fall right along, month after month, until, I think, five or six were closed up during the fall of 1875, and the result was that there was a panicky feeling among the depositors throughout the city.

Q. All I wanted to get at was that the result was produced by a sensitive feeling caused by the closing of these banks? A. Yes, sir; by the nervousness of the depositors generally throughout the city.

Q. Now, I will call your attention to the Mutual Benefit Savings Bank, and state what action was taken in respect to that bank? A. At the time of the closing?

Q. And before; when your attention was first especially called to that bank that led you to take any action?

The PRESIDENT—What was the bank?

Mr. MCGUIRE—The Mutual Benefit.

A. My attention was specially called to it, as I now remember, three or four days before a receiver was appointed; I was in New York a good deal all that fall while these failures were going on, closing up these banks and looking to matters generally; I had an interview in the post-office building with General ———; I forget now his name, but no matter; he was trustee or attorney for the bank; we had a meeting there in regard to this bank; they had taken the sixty days' notice, I think.

By Mr. TRACY:

Q. Whose office was it in; you don't recall the name of the persons? A. His brother used to be Attorney-General and lived in Albany—Gen. Tremain; Mr. Reid had made an examination of the bank at

that time and found a deficiency; and I informed them that I should close the bank up unless they saw fit to put their hands in their pockets and make it up and wanted to go on; they asked for a certain number of days to hold a meeting of the trustees as to the practicability of doing that and the advisability of doing it; my recollection is two or three days; I granted the time but before the time expired and while I was there, they slid out privately and got this man appointed receiver; I say "slid out"—I mean without my knowledge; I don't say they did unfairly.

Q. Did they appoint the receiver before you left the city of New York? A. Yes, sir; I think the day before I granted them had expired; that is my recollection now.

Q. What was the amount of the deficiency reported at that time? A. It was small [looking at papers], \$22,783.92.

Q. What was the date of the examination? A. November 15, 1875, and subsequent dates.

Q. Had there been any circumstance in connection with that bank to call your attention specially to it prior to that time? A. Nothing except what is contained in the papers.

Q. That is out of general reports? A. No, not that; what is contained in the records of the department, their reports, etc.; I think up to that time I had not met any officers of that bank; I am quite certain I had not.

Q. What was the amount of the resources of the bank at that time? was it a large or small bank? A. Their liabilities were \$446,709.61, including interest due depositors when the receiver was appointed; that is when this examination was made.

Q. Are there any other facts connected with your connection with this bank that you wish now to explain? A. Not that I remember now.

Senator WOODIN—I would like to inquire of Mr. McGuire whether he thinks he will close the examination by the usual hour of adjournment.

Mr. MCGUIRE—No, I don't think I can.

Senator WOODIN—Inasmuch as we have begun an hour earlier than prescribed by the original rules, and have not changed the hour of adjournment, I submit whether it would not be best to take a recess at this point, and I move a recess to be taken.

The PRESIDENT—There being no objection, so ordered.

The Senate thereupon took a recess to four o'clock P. M.



SARATOGA, August 7, 1877.

The Senate reconvened, pursuant to adjournment at 4 P. M., a quorum present.

*De Witt C. Ellis* resumed upon the direct-examination, further testified:

By Mr. McGUIRE:

Q. By the report of Mr. Reid in 1873, as to the Mutual Benefit Savings Bank, there was a deficiency reported; what have you to say as to that, and any action you took or instituted? A. The trustees of the bank made up that deficiency themselves, and agreed among themselves that they would make up any loss growing out of the expenses of the bank until such time as it got to be self-sustaining; it was a small, new bank.

Q. This bank was a new bank, wasn't it? A. Yes, sir.

Q. And many of these banks you have mentioned this forenoon (all in fact except the Third Avenue), were comparatively new banks, were they not? A. Third Avenue and Mechanics and Traders'.

Q. Had that been the rule of the department during your administration and prior administrations, to allow these new banks to make up these small deficiencies in that way? A. It had been; as a matter of fact all new banks—almost all new banks—have to be supported to some extent, by the trustees, either by the deposit of money or guarantee of some kind, until they become self-sustaining.

Q. By an increase of deposit? A. Yes, sir; when a bank starts, it has no capitol, nothing to buy furniture with and pay rent, and until such time as the deposit is large enough, after paying its dividends, to pay all the expenses of the bank, they have to be borne by the trustees.

Q. In view of that fact, the department has acted in the manner you have stated? A. Yes, sir.

Q. You may illustrate, by taking the first year of a savings bank so as to get your idea before the Senate? A. Well, a savings bank might start to-day, and run a year, having no capital to-day, and no property or assets of any kind; the organization is completed, and they open doors for business; during the year, we will say they take in \$100,000, barely enough to pay dividends and a portion of the expenses; it becomes necessary for the bank to have a safe to keep its money in; they pay \$2,000 or \$3,000 for a safe, for instance; after they have done so, the examiner goes in and makes an examination of that bank, and he finds \$98,000, for instance, in cash, bonds and mortgages, etc., and the safe that cost \$2,000; now, if you put the safe down at the value it would bring under the hammer, the bank

would be insolvent; a second-hand safe is not worth what it cost; if you adopt that theory, there would be technically an insolvent savings bank at the end of the year; all savings banks must necessarily be weak until they get strong; they have no capital stock, no guarantee, and nothing to earn money with.

Q. Suppose the investment had been in United State bonds, and they had deposited them as they did four or five years ago, what would have been the result? A. Take a bank the first of January, 1876, with \$1,000,000 deposit, and a surplus of \$40,000, half of it cash, and the balance in good securities, if they had put \$500,000 in government bonds in 1876, it would have been bankrupt the 1st of January, 1877; that is to say, it would have been insolvent; there would have been a deficiency on the shrinkage of those governments.

Q. That is, if you go on a strict deficiency, it would be insolvent?

A. Yes, sir; it would have wiped the \$40,000 out, and left them about \$10,000 in deficiency.

Q. And when you find such cases —

The WITNESS — That was shown in one of the large banks in New York during that year.

Q. Which bank? A. I would not like to name the bank; they lost on governments alone, the president told me, and the report shows it, from the 1st of January, 1876 to the 1st of January, 1877, between \$700,000 and \$800,000.

By Senator COLE:

Q. What bank is that? A. A bank in New York.

By Mr. TRACY:

Q. We would like to know the name of it; was it a bank with a surplus or not? A. Yes, sir.

Q. Larger than that loss? A. Yes, sir; it was a big bank and a strong bank yet; I speak of that as an illustration.

By Mr. McGUIRE:

Q. In such cases has it been the rule and action of the department to exercise your best judgment as to what course the superintendent should pursue?

Mr. TRACY — I object to it as wholly inadmissible and leading.

Mr. CHAPMAN — Mr. President, the idea of the great State of New York, whose representative is here, where an official of the State is being tried under the charges as they are presented here; I submit to the Senate whether it is within the dignity of the prosecution, which is representing the State of New York, to object to questions

on the ground of their being leading. I submit in the trial of a petty criminal offense in a County Court where the defendant is charged simply with stealing chickens, that that line of objection would be rebuked by the court. I submit further, that the district attorney of a county is supposed to represent both sides — not simply the interests of the complainant, who may desire to convict the accused under any and all circumstances, but he represents the people of the county, and among the people of the county he finds the defendant, the person charged with the crime. It is within the knowledge of every lawyer around this circle that it is recognized as a part of a district attorney's duty to protect the rights of the accused just as faithfully and just as energetically as he is required to protect the rights of the people. Now, sir, when we step from this little, low plain of the trial of a criminal in a County Court up into this broad expanse, where the whole people of the State are interested on the one side, and every one of them are just as much interested on the other, I submit that it is not within the dignity that should properly pertain to a trial of this nature that the prosecution should stoop to raising these technical objections — objecting to a question on the ground of its being leading. I will not dispute but that my friend has the right to make the objection and now we appeal to the Senate that the accused may have the right of a liberal presentation and a liberal construction of the rules.

Mr. TRACY — Mr. President, I should be very sorry if any error on our part should soil the dignity of the State of New York, and I am incapable of doing an injustice deliberately to this party who is now upon the stand, and I do not think I have done a small thing in making this objection. Now, generally, it is the province of the court to admit or reject, in its discretion, leading questions. If you can find a case that is more unfit wherein to have a leading question put than this I know not where to look for the illustration. Here is the head of the Banking Department, having been there four years and a half. He has testified to certain facts this afternoon generally about the policy of his department, and now, instead of leaving him to tell what this course of business was, and what its rule or action was, the learned counsel treats this witness like an infant, and forms a proposition in just the terms he wants it, and then he wants him to say "yes." Is it necessary to lead this witness in the form in which the question indicates; whether "in such cases it has been the policy of the department, before and afterwards, to exercise its best judgment in a certain way?" If that is his idea, can he not utter it? The rule in regard to leading questions is this: If a man has an idea, he has words to put it in, unless he is a very simple-minded, weak person, and can hardly talk, and is very much abashed, and it is the duty

of counsel to put them, and the court in such cases will allow them. Is this such a case that the witness must be taken along with a proposition put in his mouth to say : Was that it ? While I submit that it is the rule of the court and rule of evidence for the court to say whether this is a leading question or not, it is undeniable that this is a leading question, unless an extraordinary rule is to prevail in this case. An examination in such a case becomes not an inquiry what a man's course was, but it becomes the effort of counsel to shape up a proposition for him, and ask him if he will assent to it. I feel bound to take this objection, and I do not think I have degraded the dignity of the State of New York in so doing. If the Senate shall say it is best not to examine this witness in that way, then the sooner we find it out the better, I think.

Upon the President's request the stenographer read the question.

Senator HARRIS—Mr. President, I have no doubt but this is a leading question. The counsel for the respondent, I apprehend, entertain no doubt upon that subject, because his address was an appeal to the counsel of the prosecution to allow them to put leading questions, and yet there can be no harm, it seems to me, in such a question being put to this witness and being answered by the witness. It is nothing but the calling upon the witness to state what the statute is upon this subject. The duty of the superintendent, according to the statute, is to decide as to whether it is safe and expedient for a bank to go on ; whether it is unsafe and inexpedient for it to go on. That is the very matter which is left by the statute to the superintendent in all these cases. That is the language of the statute, and this is simply asking this witness whether that has been the rule of the department. It undoubtedly has been the rule of the department ; if it has not it should have been, and the department has not been up to the statute. Because the statute leaves it entirely to the superintendent whether it is safe and expedient for a bank to continue business or unsafe and inexpedient for it to do so. If the counsel for the prosecution insist upon their objection according to the rules we have established, viz. : that we shall be governed by the rules entertained by the courts of the State, why this question is an improper one, and yet I can see no objection to its being put, but I shall have to be guided according to our rules in my vote upon this question. We have established those rules, and those rules forbid the putting of leading questions by the counsel to the witness, and this is a leading question.

Mr. McGUIRE—Mr. President, the purpose of the question is very easy to be seen. Some Senators may entertain the idea that if there be a constructive deficiency in a bank of \$10,000 or \$15,000, that it is the duty of the superintendent to immediately put that bank into the

hands of a receiver, or in process of liquidation. Now, one object of the question is to show what the action of the department is in such cases. If they find a bank in that situation, with proper management and circumstances surrounding that bank, it cannot get to the knowledge of this Senate whether he, in the exercise of his best judgment, fosters and attempts to carry that bank along—bridge it over. Now there are many things which an officer in discretion seeks. There are many circumstances surrounding and impelling his action which any supervising or attempted supervising body cannot see, nor can they feel or realize the circumstances under which the superintendent was acting. If the superintendent was charged with an absolute breach of duty, in other words an unperformance of an express provision of law that any one could see and determine, who was capable of understanding the act and understanding the requirements of the law, this would be different. But when a discretionary power is to be exercised, and that discretion depends upon a variety of circumstances, then the case assumes an entirely different aspect, and the body attempting to supervise the discretion, and attempting to say that his judgment was improperly exercised, should be possessed of all the facts and surroundings. I submit, Mr. President and gentlemen of the Senate, that the utmost latitude should be given to the officer to state not only the facts and circumstances such as can be communicated, but the information of his department not only under himself but under prior administrations, in determining how the discretion should be exercised. They propose to do business in a legal way to bear upon the particular act which he may be called upon to investigate.

Now, it is utterly impossible, I submit, Mr. President, at all to determine what a leading question is, and what is not a leading question. To-day our highest courts of judicature are yet determining the question whether a peculiar question put to a witness was leading or whether it was not leading. A leading question depends upon the matter investigated and the circumstances under which the question is put. While to one case or set of circumstances a question may appear to be leading, under another state of circumstances it would not be leading. And whether a question is leading or not often depends upon the stage of the trial at which the question may be put. For instance, a witness is called upon to state a conversation. Now, to call the attention of the witness specifically to the conversation at the outset, "did A B state so and so" would be of such a leading character that any court would exclude it "state the conversation," and after the conversation is stated, then it is permissible to call the attention of the witness directly and leadingly to any portion of the conversation which is supposed to be omitted where it would have been excluded at the outset, every court admits it in the end. Then, again, Mr. President, there is no unbending rule of

law in courts saying that every leading question shall be excluded, as I understand it. That depends upon the discretion to be exercised by the court. Now, suppose you, sir, as a presiding officer of this body, should attempt to determine this question for yourself whether it was leading or not, you might say it was leading. But the power rests in you, notwithstanding, to say, "in the exercise of my discretion as a judicial officer the question may be answered." And so with the Senate, conceding this question is leading, the rules of law do not unbendingly and rigorously require this Senate to exclude it, but it authorizes this Senate, in the exercise of a discretion, to say whether the question shall be answered or not—whether, under the peculiar circumstances of the case, they will allow the question to be put. And if it is in a court, no court of review now at this late day, attempts to review the discretion of the trial judge in admitting an answer to a leading question.

So, assuming, Mr. President, for the purposes of the argument, that it is a leading question, then the question is addressed to the inquiry, "Will you exercise the same power that a court would exercise?" or, if you consider it expedient and proper to allow a leading question to be put, will you do so? If the Senate is going to be governed by the strict rules of evidence they will, in the exercise of their own discretion, admit or reject it. If the Senate reject, why we are content. If the Senate admit, the counsel for the prosecution will have to submit to whatever ruling is made.

Senator COLE—Can you get just what you want by asking the witness what was the practice in the line you have suggestive?

Senator WOODIN—That don't get at the fact.

The PRESIDENT—Several Senators have come in since the question has been put, and the stenographer will read the question.

The stenographer read the question.

Mr. McGUIRE—From the outset of the examination of Mr. Ellis, I think the second or third question put—counsel for the State interposed the objection, that the question was leading and he has tortured his ingenuity from the beginning of the examination of Mr. Ellis, down to this time in seeking in every case where he could possibly see a chance to have the question rejected by the Senate, upon the ground of having the appearance of being leading. What I wish, Mr. President, to understand now, is whether the Senate is going to adopt an unbending rule, that they will not exercise the same discretion that a judge would exercise upon a trial. But if the Senate is going to adopt and insist upon a rule here which no judge of any court of this State to day practices, and if the Senate is to say that if a question has an element of being leading it must be excluded, why we can but submit.

Now, that is one proposition that I desire the Senate to pass upon ; whether any and every question that can be tortured into a leading question is to be excluded or not, and whether we are to be held to the strict, rigorous rule, that the questions must be in no form suggestive of the answer to be made by the witness. If the Senate shall adopt the rule that it will not exercise a discretion which a trial judge would exercise, and say we must confine ourselves to strict questions under the strictest rules of the common law of evidence, then we will adapt our course to it. We will endeavor, I will say to the Senate, in the narration of facts to be detailed by the witness, carefully and studiously, to avoid any question leading in its character, that will suggest to the witness in any form the answer to be given to that question, but when it comes to the action of the department to motives which governed the department or its head (the superintendent), why then it seems to me that nothing more than common fairness, requires that such questions should be allowed to be put to the witness as will inform the Senate whether Mr. Ellis was acting upon a matured judgment, or whether he was acting or neglecting to act upon no judgment at all. What I wish to get at is what the department has heretofore done in like cases. What he, as superintendent has done for the purpose of informing the Senate, that when a bank had a small deficiency or even considerable of a deficiency, in comparison to its resources, and that the management of the bank has been proper ( its officers have been men of integrity, and its officers designed to sustain and support the bank ), that that action has never been arbitrary in closing up such bank and putting it in the hands of a receiver, merely because upon the face of the papers it could not pay dollar for dollar.

Mr. TRACY — Mr. President, I took this objection before, and as the Senate has a somewhat fuller attendance than when I first took it, it is proper for me to repeat a little. First, I was met with the flout that the honor and dignity of the great State of New York was damaged by my taking a small, technical objection. I made my answer to that as well as I could, deeming that nothing of that sort could be fairly intimated from what I had said or done. In the next place I stated most distinctly at the outset that the power to put a leading question is in the court to allow or to disallow — no exception lies to its decision when the court exercises its judgment. And then I appealed to the judgment of this court that this was such a case as would allow such a question to be put in a leading case. First, as a case where the party himself after being examined at large upon these subjects before a committee, and after hearing the accusations against him for a long time, and this trial on for considerable time, ought to be capable of describing his conduct himself, and declaring



the principles upon which he acted without the questions being formulated for him and put in this method to be answered yea. Then as to the very nature of the question itself, there has been mention made of such cases ; that there were cases like a new savings bank that buys a new safe in which to deposit its money, etc., and, if wound up the next day, it would be short, and all that. Some such cases were paraded at length here, and then comes the question, as I took it down from the reading of the stenographers : " In such cases has it been the rule and action of the department to exercise your best judgment as to what course the superintendent should pursue ? " Not asking " what has been the action of the department in such cases ? " That would be the fairest question in the world to put the witness, and a question that treats the witness with dignity, and as a man capable of answering with understanding and intelligence, and as comprehending what he is about. Not " what has been the rule of the department in such cases," and whether his action conformed or not, but it is put into a gross proposition of " Not guilty " on the whole case. It is shaped for him, and he is called upon to testify, and the presumption is that this question is intended to be answered " yea," and the accused is expected to answer " yea ; " that it has been the rule of the department in his time, and before him, as well ( certainly in his own time ), and has been the action of the department in all such cases to exercise the best judgment it possesses in respect to its course. It is saying to Mr. Ellis ( the next question might follow just as well ), " Upon all the matters, with that fact before you in your department, have you always and upon every occasion, exercised your best judgment to perform your whole duty," and he would solemnly say, " Yea." Would that be good for any thing as evidence ? Is that the way to get at facts ? Is he put on the stand to answer to the formulations of counsel ? The question has such a depth and possesses such a length, that a response to a leading question of that sort is perfectly out of the question. In a tribunal you allow many leading questions. I refer to the latitude given in permitting leading questions to persons of feeble mind, of contracted education and minds slow to grasp ideas, where the queries are upon some informal and unimportant matters ; but, sir, it is rare indeed, there is no precedent for it, that the judge says it is proper to allow a man to testify " yea " or " nay " to the formulations of counsel to a question carefully stated and covering the whole case. " In such case " ( where a bank is short ) " has it been the action " ( on every occasion ) " to use your best judgment as a public officer, every time, as to what you should do ? " Now, Mr. President, I beg leave to say further, as this is a matter of discretion with the court, the Senate can receive it or not as it sees fit. I want the gentlemen to see the objection. It seems to me if it is not an occasion for me to

take an objection, then I had better not take an objection for any kind of a leading question whatever, and the whole matter is thrown by the board. The nature of the question, and of the gentleman put upon the stand, having been examined all the morning, and having been examined at length before, and then for the gentleman to ask him what he has done. There is matter in the substance of the question it might be said, but I took the objection that it was leading, as counsel brought in this aggregation of matters, the practice and rule and conduct in all such cases throughout his term of office, to do his duty every time. That is putting in the plea of "not guilty." That is not the form in which it should be put. If he had been asked what his action had been in such cases, that would have been one thing. What his rule had been in such cases, that would be a matter of opinion and he could state it, and it could be divided into two questions; but he sweeps the whole field of his action as a public officer, and says in gross, "In all that sort of cases have you always as a rule, and in fact exercised the best judgement you were capable of?" and of course he is to say "yea" to that, or else they would not put the question.

Senator WOODIN—This, after all, Mr. President, is simply a question submitted to the discretion of the Senate; the senate has already adopted a rule which permits it to exercise its discretion whether it will allow a leading question; such is one of the rules of this Senate. That, sir, is a part and parcel of the rules of evidence; permit every leading question, although there is a rule forbidding leading questions. Nevertheless, the rules of evidence permit the court to pass upon the question, in its discretion, whether it will allow such leading question or not. There is no rule of evidence, either here or elsewhere, which rejects leading questions absolutely, but always with the qualification of allowing the answer first. It is to allow it or not to exercise his discretion in regard to it. Now it being that question, and that alone, it seems that we should be a little considerate here. The greatest degree of liberality that has to my mind been almost shocking sometimes has been exercised toward the prosecution from the beginning of this trial down to the present moment. Questions that were leading, and questions that to my mind were irrelevant, nevertheless have been allowed by the Senate to be put. The greatest degree of liberality has been extended to the prosecution, and it is pretty late now to raise this question of whether the Senate shall exercise its discretion in allowing a leading question to be put. What is this question? And first let me preface by saying that the prosecution have been industriously engaged here for two weeks informing the Senate of just precisely what the superintendent has done, and when they get to the end of that the superintendent is put upon the stand and asked: "In such cases has it been your policy to exercise

your best judgment?" And the prosecution call that leading. What he has done is already in evidence and there is no dispute about it. There is no question about what he has done. Now, then the question is put to him : "Did you exercise your best judgment, and was that your policy?" And will the counsel for the prosecution or any other human being tell how you can ascertain whether he has exercised his best judgment, unless you put that question direct to him ? You may ask him what his policy has been, and he may give you a correct answer, and answer it from morning till night, but you haven't got the answer yet from him whether he acted according to his best judgment. He alone, of all persons in this world, can answer that question, and you cannot ascertain the fact unless you ask that question of him. You have got out what he has done. The counsel for the prosecution says : "Why not ask him what his policy has been?" Well, he might be asked that, and he could answer a long string of things, but yet he has not answered what his best policy and judgment has been ; what his own judgment can tell. He may repeat it over and over, but you have not yet learned from him whether he acted according to his best judgment, or according to the judgment of some one else. Now, it seems to me that question is not a leading question, or, if leading, it is the only possible way you can get that answer, unless you resort to a trick, and ask a question and then say : "I will not ask that question. Now, I will ask you what your policy has been?" And so the witness having learned, from the interrogator, what he desires to get at, would proceed to say : "Why, my policy has been to exercise my best judgment." But I would rather the question would be put direct to the witness. We have the history of his acts for the last four years, and we know what he has done, and counsel for the prosecution have been at work for two weeks extracting such information and telling us what he has done, and now the question is put to him, "Did you exercise your best judgment?" Is there any other way to get at that act ? because it is a fact. It seems to me it is not objectionable, because it is leading. It seems to me if a defense for the Bank Superintendent is, "Did he exercise his best judgment?" and, having exercised his best judgment, that he should go free, that he ought to have the benefit of that direct question.

Senator STARBUCK—Mr. President, until within the last few years neither this question, nor any question akin to it, would be tolerated in any court of justice in this State. The reason why it would not be tolerated, and the reason why the minds of the best jurists are taxed with the question as to whether the Court of Appeals should recede from the principle involved in this debate, is this : The answer of the witness tenders no issue that can be litigated by testimony. As lawyers here know, the question first arose upon the

proposition to prove, out of the mouth of an alleged fraudulent assignor, the fact that he made the assignment and demeaned himself, he did, without any intent on his part to hinder, delay or defraud his creditors. Up to that time the wise rule had prevailed that he should declare what he did, and upon what he did the judicial mind would determine as to whether or not it evidenced an intent to defraud his creditors, and the objection to this new rule is, and always has been, that, when the witness declares, "I did this thing without any intent to hinder, delay or defraud my creditors," there can be no counter-proposition stated. It, therefore, is not an issuable question, and, as I said before, the minds of the best jurists are to-day taxed as to whether it is a duty in the administration of our jurisprudence to recede from that rule. Now you have that rule embodied in this question; that precise rule an interrogation to this witness as to whether he exercised his best judgment. Upon the principles that have hitherto prevailed that would be determined upon the thing he did, and if the thing he did was repugnant to the best judgment of the best and most enlightened minds it would be determined against him, but if it was in consonance and harmony with the best judgments of the best enlightened minds, he would prevail upon the fact. It is proposed to propound to him, "sir, did you in truth exercise your best judgment?" Who shall show he did not, excepting that he speaks from the fact and attempts to argue that no just mind ought to reach such conclusion. Now, sir, this proposition is plausibly stated and plausibly argued; I mean upon the part of the party propounding the question. Plausibly stated and plausibly argued I say. But, sir, lying at the foundation of this debate is the broad admission that the question involves a departure from the wise principles that have governed jurisprudence through all the years. That wise principle condemns leading questions in all cases where the mind of the court is led to the conclusion that the leading of the mind of the witness is for a vicious purpose. Now here it is agreed between counsel that the question is a leading question and violates this principle. For a good end? Why it is to let into the case the possibility of interrogating upon a question that cannot be litigated because there is no one who can speak on the other side of the question. The Senate is invoked to let in leading questions, pure and simple, for a vicious purpose, and it does not come with the same favor as the case comes that is put by way of argument, where the effort or object is to enlighten a weak mind, to aid a faltering witness, or to relieve from the embarrassment of bashfulness. Here we are asked to admit, concededly, a leading question, not for a good, but to strengthen a bad purpose. Now, for such a purpose, the rule ought not to be let down or relaxed; but how shall it be put, says the Senator? Why, the method suggested to every

mind is to say to this witness: "You have heard the acts imputed to you described, do you admit their truth?" "Yes." "Well, sir, will you state to the Senate what were the facts, and the motive that governed your action in doing the thing for which you are now censured?" De Witt C. Ellis, as he sits there, will tell, in detail, the best way he can, the facts and the motives that governed his mind in acting in the manner in which he acted; and when he gives that detail, he will put into your hands, sir, and into the hands of every Senator, an instrument upon which to scrutinize the truthfulness of the matters invoked by this question. "I exercised my best judgment, and governed by the strictest—"

Senator WOODIN—How are you to litigate that answer when you get it? That is the question we have been bothered with all the way through.

Senator STARBUCK—The Senator did not hear my formulæ.

Senator WOODIN—Yes; I heard it all.

Senator STARBUCK—I say when he has heard the question: "What were the motives that governed your action—what were the facts—why did you do this thing?" if he will answer "I was influenced by my own best judgment" the Senator from the Twenty-fifth [Mr. Woodin] knows just how far that goes.

But to return to the questions "what under these surroundings were the influences that governed or influenced you to these things?" Suppose he says in reply: "Well, sir, I met Mr. Freeman Clark of New York, and held a conversation with him; I met Jay Gould in New York, and had a conversation with him; they are strong financial men; they told me if I proceeded to disturb the Third National Bank I would thereby shake financial centers; there would be a run upon the banks in which we were interested, and that would make large losses;" it may be he would render that for a reason; if he did, would he not render a reason fatal to himself? Why? Because he went to those sources of information whose interests were adverse to the depositors that he was there to protect; and that is what I mean when I say that if called upon to describe what were the reasons of his action, and what were the influences that governed him, and what were the motives that made him do as he did, then he is called upon to specify something, and if he specifies something as fatal to his case, as would be the supposed case I have put, then we know just how much there is of the declaration that he exercised his own best judgment. For these reasons thus hastily stated, I think the Senate ought not to recede from the sound rule of ordinary practice that leading questions shall not be propounded. I think the Senate ought not to recede from the proposition which I think has never been dis-

puted until to-day that leading questions should not be permitted when their purpose is vicious, and is not to aid in elucidating the truth.

Senator GERARD—Mr. President, as I understand the question now under discussion is not that supposed to be the question by the Senator from the Twenty-fifth. The question, as I heard it read by the clerk, was, what was the rule of your department that governed you in similar cases?

Senator WOODIN—That is not the question. The Senator based his argument upon the question, "Did you base your judgment upon—"

Mr. Tracy here read the question originally propounded.

Senator GERARD—That is what I supposed. Now, sir, very briefly, we are not here to try a rule, but an application, and a duty arising from a certain official position in connection with certain facts. The question as to the existence of the rule must apply either to a rule under the administration of the present incumbent, or a rule under prior administration. Now it is very evident that this gentleman cannot testify as to the rule under a prior administration, because he was not there, and his answer would not be the best evidence, but would be hearsary. Neither do I think it would be proper for him to testify, he being the head of the department, to a rule which was to be the guide of his action, and under which he can establish a defense. The question is not what was the rule of the department, but what was the duty of the department? The question cannot apply to a prior administration but must apply to this, and it strikes me it is quite irrelevant and quite immaterial what rule the gentleman may have laid down for his department, whether good, bad or indifferent, and the question follows (I throw out all considerations as to whether it is leading or not), was the duty properly discharged, whether or not a rule was established by the incumbent?

Senator WOODIN—The Senator ought to hear the question read again, because it confines it to the working of the department.

The stenographer read the question.

Senator SCHOONMAKER—Mr. President, from the importance given to this inquiry in the discussion by the Senators and counsel, it must be regarded as a crucial inquiry, but it does not so appear to me. It seems to me the Senator from the Seventh (Mr. Gerard) has characterized this question as it ought to be characterized. It simply calls for an answer whether the department had a certain rule or not; "in such cases was it the rule and action of the department to do so-and-so." In other words, "to exercise your best judgment." As the Senator well observes it is immaterial what the rule of the depart-

ment may have been, if that rule was not in conformity to the statute. The only rule to govern the officer at the head of the department is the statute. If there be a rule in the department at variance with the statute then the rule is "more honored in the breach than in the observance." Now to understand whether this question is proper, all we have to do is to compare the question with the statute and then we can reach a satisfactory result without any difficulty. I have the statute before me. It is the act of 1871, and I believe the language is identical with the act of 1875 in this particular. First, it is made the duty of the superintendent to examine banks as often as once in two years. Second, "and whenever any savings bank, or institution for savings, shall fail to make a report in compliance with this act, or whenever the superintendent shall have reason to believe—" and I ask Senators to mark the phraseology of this statute—"that any savings bank or institution for savings is loaning or investing money in violation of its charter or of law, or is conducting business in an unsafe manner, it shall likewise be his duty," to do what? To make an examination. That is, when he shall have reason to believe that these improper things exist, then he must make his examination. "And whenever it shall appear,"—now this follows the examination—"to the superintendent, from any examination"—"whenever the facts discovered upon the examination"—"made pursuant to the provisions of this section, that any savings bank or institution for savings has been guilty of a violation of its charter or of law, or is conducting business in an unsafe manner, he shall, by an order under his hand and seal of office, addressed to the institution so offending, direct discontinuance of such illegal or unsafe practices." That is the next step; directing a discontinuance of the objectionable practices. Now, third, "and whenever any savings bank or institution for savings should refuse or neglect to comply with such order, or whenever it shall appear to the superintendent that it is unsafe or inexpedient for any savings bank or institution for savings to continue to transact business, he *shall*"—that is the language—"communicate that fact to the Attorney-General, whose duty it shall then be to institute such proceedings" as are prescribed. Now, these duties are mandatory upon the superintendent. There is no rule for the exercise of judgment at all. It is a command of the statute. Whenever it shall appear by an examination, to be conducted in person by the superintendent or by his proxy, then the command of the statute steps in and directs what shall be done. That is the statute. Of what possible materiality is it whether a rule exists by the custom of the department or not. A rule of that kind may be at war with these commands of the statute.

I attach no sort of importance to the form of the question, whether it be leading or not. Unless the question be so comprehensive as to



embody an entire answer, or to draw forth an answer, I would never exclude a question because it might be slightly leading. Take the question here as to the materiality—the substance of this question—whether a rule established by an officer whose duty it is to obey law shall supersede the law. That is the question. Now, the Senator from the Twenty-fifth (Mr. Woodin), in the kindness of his heart, seems to think that that evidence might be proper, but I appeal from the Senator's heart to his judgment.

Senator WOODIN—That is what I spoke from, my judgment.

Senator SCHOONMAKER—And I ask him whether, in his judgment, that kind of testimony is proper. This is not a question of motive. I differ with the Senator from the Eighteenth (Mr. Starbuck). It is not a question of motive all, but it is the question, with the facts in a particular given case, to which the attention of the officer was called, did he, in the particular and specific case, regard it as safe and expedient, or as unsafe and inexpedient, that a particular bank should be suffered to continue its business. As I conceive, there should be no difficulty about this. The facts relating to any bank can be given—all the material facts—and then it is very easy for this or any other witness who may be put upon the stand to say whether, upon these facts, he decided that it was safe and expedient, or unsafe or inexpedient, for a particular bank to continue business. This rule throws no light upon the subject at all. There can be no rule except the law.

Senator WOODIN—One word, Mr. President, and then I will have done. I am a little at a loss to understand why it is that the Senator from the Fourteenth (Mr. Schoonmaker), who is always fair, and the Senator from the Seventh (Mr. Gerard), who is equally fair, should repeat with such emphasis, over and over again, their objections to the rule of the department, and leave out other very material points in this question: "And action." I do not care any thing about what the rule of the department has been unless their action has been in accordance with the rule. This question speaks of the rule and action of the department, and not the rule alone. We do not care any thing about their rule, however good it may be, unless their action has been in accordance with it. That is the precise question put here. "Has it been the rule"—there the Senators from the Seventh and Fourteenth stop, after emphasizing again and again, "has it been the rule of the department." I don't care any thing about that, but when I learn there has been a good rule, and that the action of the department has been in accordance with it, it seems to me to be material to inquire about it. "Has it been the rule and action of the department to exercise its best judgment. While the Senator from the Fourteenth (Mr. Schoonmaker) reads this statute, he finds good, convenient places for emphasis. He says there is no chance here for discretion. No

chance here for the exercise of wise judgment, and when he reaches the mandatory part of this statute, he emphasises and says, "*he shall thereupon.*" That, without the emphasis, reads just as strong. But there is another place where emphasis may be brought to bear; "or whenever it shall appear to the superintendent that it is unsafe or inexpedient;" appear to what? Appear to his understanding; appear to his best judgment that it is unsafe.

Senator SCHOONMAKER—Mr. President, will the Senator allow me?

Senator WOODIN—Certainly, sir.

Senator SCHOONMAKER—Appear how? Why appear by the facts developed upon this examination?

Senator WOODIN—Bring out whatever facts you may by your examination, unless those facts make it appear to the understanding and judgment of the Bank Superintendent, then I ask whether he may be considered culpable upon the rule *and action* of the department in exercising his best judgment in view of all the facts and circumstances of the case.

There is another reason, Senators, why I don't want to rule out this evidence, or to seemingly establish a rule for our judgment in this case. Now, I understand it to have been (I judge it to be from the very question put here) the policy, or one of the grounds of defense, of the superintendent, all through the examination before the committee, that the superintendent, having exercised his best judgment and his wisest discretion in regard to closing up this business, that that is a good defense. Now, then, do not prejudice this case, Senators, by saying to-day that is no defense by ruling out this evidence. Let the evidence come, and suspend your judgment until the evidence is in. To decide adversely to this question now, and to determine for ourselves here and now that this element shall be excluded, is establishing a barrier against the time when we shall make up our final judgment in this case. It seems to me that we do not want to commit ourselves to this pre-judgment. I am not prepared now to say, nor would I volunteer to say—

Senator SCHOONMAKER—I ask the Senator not to put any Senator in a false position.

Senator WOODIN—Oh, certainly not; that was on the emphasis.

Senator SCHOONMAKER—The criticism I made was this: that the superintendent (I take him now as a witness upon the stand) has a right to say whether, in a particular case, he decided it was expedient or otherwise for a bank to go on, but that the general question, whether it is a rule and whether it has been the action of the department, is wholly immaterial.

Senator MCCARTHY—I sometimes think, sir, that I am out of place around this circle. I did not come here supposing it was strictly a

judicial court, to be governed by strict rules of jurisprudence, or the practice of the courts of law. I came here, as I would myself desire to come were I a public officer upon trial, without the privilege, or even asking the privilege as such an officer, of being defended by the technical objections of the law. And it is precisely so here. If this case is to be decided upon the technicalities of the questions asked, in what manner am I to arrive at a correct opinion, unless I go to the Senator from the Eighteenth and get the interpretation of the law? The Superintendent of Banks is upon trial for malfeasance of office, and in a measure we are controlled by the rules of court, and it matters not what his answers may be as to the fact, or as to the manner in which he conducted that department. We shall judge of his answers and of his actions by all the facts which shall be presented to us here, and, I hope they may all be presented, that would be proper in courts of law, without any technical objections. I think they ought to be proper here, and that the objections ought not to be insisted upon. We are judges and not jurors. We shall be capable of sifting out the facts from the evidence as it shall be developed here, either for or against, and we require no technicalities and nothing except plain common sense to arrive at a judgment.

Mr. McGUIRE—Mr. President, I beg leave to make a remark or two; and, the remarks that I shall address to the Senate will be submitted with all the respect possible at my command. The respondent in this case has felt himself from time to time during the progress of this investigation, embarrassed by the expression of opinions upon the part of Senators, which virtually disposes of the case. Now, in the discussion upon this law of 1871, by the learned Senator, it virtually disposes of this entire case. If the superintendent has no discretion—if the law has made him a perfect dummy, made him an automaton, a machine, as argued by the learned Senator, that is his duty without a discretion, the moment a bank shows a deficiency—to close it up—why this investigation might just as well end. Without intending any disrespect, Mr. President, it is a little remarkable that a judge, who is to give a construction to a statute, should attempt to construe that statute before counsel has been heard upon it. The counsel for the respondent has much to say about this statute, and when this case is finally submitted to the Senate I apprehend that these expressions and these words will be found to have been, I may say, unnecessary, and that the minds of many Senators will probably not have the same inclination that they have to-day; that this statute is mandatory, and that there is no discretion by one of the high officers of the State in the proper execution of his duties. Probably when the counsel for the respondent states what these words and expressions mean—when the counsel shall have discussed the question as to what the word “safe” in the statute means, and what

the word "expedient" means, and what the word "probable" means, and the various words emphasized by the worthy Senator, it may possibly be that he may be inclined to adopt the views which we may present. At any rate, Mr. President, I merely uncomplainingly wish to say that this anticipating and deciding in advance, before argument of counsel, the important construction of a statute is exceedingly embarrassing to us, and has been since the commencement of the trial. Now, here is a statute that has not been even yet construed by a court; and does not, Mr. President, common courtesy require, before a construction is placed upon that statute by judges, that counsel should be heard, or at least be allowed to give their views, whether those views shall accord with the court or not? I allude to this case as one of the many which has arisen during the progress of this investigation. As I said, I do it uncomplainingly and with all possible kindness and respect. I do not propose to discuss that statute now. When the appropriate time arrives I propose to discuss that statute and see what it means, and whether the legislature of this State has merely created an automaton to be placed in the Bank Department, without the exercise of judgment, and without the exercise of discretion, who must follow to the letter what Senators may have been pleased to denominate as a *mandatory* provision of the statute. There will be the point of difference, it may be, between the learned counsel for the State and ourselves — whether the superintendent has any judgment, or whether he has no judgment to exercise at all.

Now, in regard to the form of the question. The Senator from the Eighteenth (Mr. Starbuck) has very correctly stated that an innovation was made upon this rule by the Court of Appeals in allowing a leading question to be put to a witness in a particular case which he cited, as to whether a party had any intent to cheat, defraud, hinder or delay his creditors in the execution of a general assignment for the benefit of the creditors. I understood the learned Senator to say that the best legal minds of the country had been endeavoring to retrace that departure from the old rule. Now, I understand, Mr. President, instead of retracing its steps, the Court of Appeals is constantly enlarging the rule, and instead of confining it to the intent to defraud creditors, in the last decision announced by that court, they have decided that it is competent to put the leading and direct question to the witness whenever intent is an essential element of the act of which the party is charged. It matters not what the case may be — what the consideration of the subject-matter may be — that court has decided that whenever intent is an element to be taken into consideration, it is proper to ask the witness what his intent was in doing such an act. Therefore, instead of the court attempting to retrace, or to use a homely phrase, "take the back track," it is going ahead, and they have

now settled it beyond any question of retracing, repealing, overruling or criticising, that wherever intent is a component in, and essential part of, an act, the witness may be asked directly what his intent was. Whether that intent consists in defrauding, whether it consists in the commission of a misdemeanor or a crime, whether that intent consists in doing any act whatever, he may now be asked what his intent was of doing the act of which complaint is made.

But probably sufficient time has already been consumed, at least upon our part. We have submitted the question to the Senate and whatever the Senate does with the question, with that action the respondent will be perfectly content. All that I arose now to say, was that I hope, and request in the most respectful and earnest manner, that Senators will not prejudge or give a construction to that statute as to the powers, the duties and rights of the Superintendent of the Bank Department, until the counsel for the respondent has been heard.

Senator VEDDER—Mr. President, this case, according to the debate seems to be going off upon different grounds of theory from what I supposed when the trial began. Now, there is no doubt about this fact: that when intent is an element in the case, that it may be proved by asking the question directly the same as any other fact. But it seems to me that the Senator from the Fourteenth was right in the view, that this is not a question of motive; this is not a question of intent; that is entirely left out by the Governor himself, who says: "It is due to Mr. Ellis to say that, upon my invitation, he has appeared before me and made explanation which seemed to acquit him of any intentional wrong." It seems to me, therefore, that motive, that intention is entirely left out of the case; that no one has assumed to assail his motives in action in the manner which he did act; therefore, if motive is out of the case, and intentional wrong, or any wrong upon which an intent can be predicated, why then it does not seem to me that it is a fact in the case, and can be proved, or that it is necessary to prove, and I state this, not upon the ground that the question is leading, because it is not leading in that particular so it ought to be excluded, if that is an issue in the case. I have understood, that the case would turn upon the point, not whether he exercised his judgment, and exercised it honestly, because I believe it is conceded he did; but the question is whether he neglected to inform himself of those facts that would enlighten his judgment, and that would have influenced him to act in a manner different from that in which he did act. It seems to me that is what we are trying—whether he availed himself of those facts, whether he was laborious and diligent in inquiring into the facts which would enlighten his understanding and give him a wise discretion, or give him a chance to exercise a wise discretion in doing what he did. It

seems to me that is what we are trying. It is to see whether he gathered up the facts; whether he improved the opportunities he had for getting at the facts concerning these matters upon which his judgment was to act, and upon which his discretion was to seize, hold and be acted upon. It seems to me that is all there is in the case; that there is no motive or intention in it. It is simply a question all the way through to see whether he possessed himself of these facts to such an extent that he cannot be said to have been neglectful of his duty in not more thoroughly knowing the facts upon which he did act. That being the case, it does not seem to me that the question is proper, because it is irrelevant, there being no such issue in the case as one of motive, or one of intent, or one in which judgment is called in play, so far as he is concerned at all, because nothing is charged against his judgment for not exercising that, but it is simply in not possessing himself in regard to those facts which were the basis of his action and which controlled and enlightened his judgment. That is the way it looks to me.

Senator STARBUCK—Mr. President, before this vote is taken I desire to say an additional word. I have argued to the Senate, the counsel conceding that this is a leading question, that the rule that leading questions may be propounded, ought not to be extended nor favored for the purpose of admitting an element that, of itself, is vicious. Now, I unite with the Senator who invoked one of our brother Senators not to place Senators in a false position, and I rise barely to say that from the vote which I shall give (for I shall vote to exclude this testimony), no Senator must infer that the giving of such a vote is a prejudging of the case. I arose to say that I put my vote, solely and exclusively, upon my disinclination to extend the rule of leading questions to elicit testimony under circumstances like these.

The PRESIDENT—Will the stenographer read the question?

The stenographer read the question.

The PRESIDENT—The question, Senators, is upon the admissibility of the question just read by the stenographer.

Senator WAGSTAFF—I would like the stenographer to read the question once more.

The PRESIDENT—The stenographer will read the question for the tenth time.

The stenographer read the question.

Senator HARRIS—Mr. President, the inquiry "in such cases," together with the discussion that has taken place, proves that the position which I took early in the debate is the true one, and that the form of the question has lead to all this difficulty. If, as was suggested, the question had been put in a proper form, and not in a leading form,

there could have been no debate here, because I think the Senators are pretty well agreed as to the substance, but the form of the question has lead to this difficulty, and shows that the rule ought to be adhered to.

As I shall cast my vote against this question I shall do it solely upon the form of the question, and I beg the President and Senators to understand that, in casting that vote, I do not at all take into consideration the substance of what shall be given in answer to it; it is simply as to the form of the question, as I before stated.

Senator BRADLEY—Mr. President, I do not wish to say much, so much time having already been taken up, but I do not think the time which I shall take will extend it very much. During this investigation I have been disposed to extend the greatest reasonable latitude in the examination. It has been done on the part of the prosecution, and whenever the question has arisen I have sustained that position. And upon this investigation, unless it can be seen that some vice is in a question that is in form leading, it seems to me it should be admitted. As has been said, it is a discretion which is exercised by the courts and is not frequent that objections are made to questions upon the simple ground that they are leading. Sometimes they should be made; sometimes it can be seen that the result is, or will be, to lead a witness to a vicious answer; but, unless something of that sort can be found in the character of the witness, and in the circumstances, it seems to me that an objection should not be sustained. Upon the ground that this question is leading, I shall vote for the admission of the testimony. There has been another question considered here, going beyond that, relating to the materiality of testimony; whether the duty of the officer or official, to any extent, depends upon the exercise of his judgment or discretion. That is a question which goes to the effect of the testimony, which I do not propose at this time to say any thing about. I leave that to the consideration of the Senate, when the case shall be finally submitted. I shall vote in favor of the answer which is sought by the counsel for the accused.

The PRESIDENT—The clerk will call.

The question being submitted to the Senate, the question was allowed.

By Mr. MCGUIRE :

Q. You may answer the question, then? A. I would like to hear the question read.

The stenographer read the question.

A. It has been my practice to exercise the best judgment I had



in all these cases, and in all cases in the management of the Bank Department.

Q. Now, Mr. Ellis, finding a bank in the condition you have described, you may state what is the action of the Bank Department ?  
A. During my term or in general ?

Q. During your term ? A. Well, I always entertained my personal knowledge, and took into account all the circumstances connected with the bank—the character of its officers, character of its assets, general management, and what its reasonable prospects of success may be—in determining whether it should be arbitrarily closed up, or permitted to go on and do business.

Q. Did you take into consideration the age of the bank ? A. Always ; also its location as to other banks, and the number of banks in the place, and all that sort of thing.

Q. What about directing an examination ; you may state under what circumstances you would direct an examination of the bank by an examiner ? A. When any facts came to my knowledge that seemed to warrant an examination or require an examination beyond the regular examination which the law provides to be made.

Q. Your attention will now be called whether you knew any thing of the action of prior superintendents from the records and documents in your office in the cases to which your attention has been called ? A. Yes, sir, I do.

Q. Will you state what the action of prior superintendents was as appearing from the records in your office ?

Mr. TRACY—I object to that question, Mr. President.

Mr. McGUIRE—Then I will withdraw it ; we'll have no controversy about that.

Q. Mr. Ellis, had any matters come to your knowledge in regard to the Security Savings Bank prior to the making of Mr. Reid's report in November, 1875 ? A. Not that I recollect of now.

Q. How was that bank regarded in the department ? A. It was regarded as a good little bank ; a bank that ought to have succeeded under ordinary circumstances ; I think it would under ordinary circumstances.

Q. And had you any knowledge that there was any particular deficiencies prior to the making of Mr. Reid's report in November, 1875 ?  
A. No, sir.

Q. And when that did come to your knowledge, did you then give the bank your immediate attention ? A. I was there on the spot at the time.

Q. Now, is it practicable for a superintendent, or an examiner sent out by the superintendent, to examine the pieces of land covered by mortgages held by these savings banks ? A. Not with any such force

as the department has or could have under any appropriation we have got ; it would be possible to have examiners enough at large expense enough, perhaps, to examine every piece of real estate of all these banks, but it would take an army of men.

Q. Take a large number of men ? A. Yes, sir.

Q. Can you state whether these large savings banks have a large or small number of mortgages ? A. Most of them have a large number, particularly in the country outside of the city of New York ; small mortgages, but many in number ; one bank in Rochester has 3,200 mortgages on property all over western New York."

Q. What bank is that ? A. Bank of Rochester ; Rochester Savings Bank ; the old bank.

Q. Now, in determining the validity or value of these mortgages, can you state what means would have to be resorted to by an examiner ?

A. Well, if he got any better information than he would get from their own records, he would have to make a personal examination of that property and call in experts who were familiar with the property and its value, in order to arrive at any determination in his own mind ; he could not, of his own knowledge, know the value if he looked at it. .

Q. And what means would he have to adapt in order to see whether the title was correct, if he was not satisfied with the papers that the bank had ? A. If he did not rely upon the certificate of the bank's attorney, or the clerk's certificate connected with the paper, he would have to inform himself by making personal search.

Q. Now, in the report of the banks or the reports of your examiners to the department, do they report these mortgages held by savings banks at their face value ? A. They do ; the law so provides.

Q. Mr. Ellis, I will ask you this question in your judgment, if the mortgages held by most of the savings banks of the State were foreclosed, or the bank put into the hands of a receiver, is there half a dozen solvent savings banks in this State ?

Mr. TRACY—I submit questions of that sort should be put one at a time, not two. There is a very wide difference between foreclosing and selling the property, and putting them in the hands of a receiver ; things are put in the hands of a receiver to save them.

Mr. MCGUIRE—I will accommodate you by calling for a division of the question.

Q. In the present depressed state of the real estate market, what in your opinion would be the condition of most of the savings banks in the State, if those mortgages were foreclosed, as to their ability to pay depositors ? A. Judging from the facts as stated here by the receivers—

Mr. TRACY—As this witness was asked for his opinion I would like

to have him give it plump and square ; if he has the opinion that they all would be insolvent let him so state ; his judgment was asked for.

The PRESIDENT—The witness should give an answer responsive to the question of course.

The WITNESS—I was attempting to.

Q. From what you know, I am speaking ? A. As I understand the question fully it is : What would be the result if the mortgages of the savings banks were put into the hands of a receiver and fore-closed now ?

Q. No reference whatever to receivers ; to make forced collections ? A. In my judgment very few savings bank could pay their depositors, if they forced the collection of their mortgages at this time.

Q. That is what I am speaking about ; if there should be a “run” on the bank, by the depositors and the bank compelled to realize so as to pay the depositors out the mortgages, what, in your judgment, would be the effect in the present depressed state of the real estate market ? A. I don’t believe many banks could do it if it was a sharp run, and they had to realize from the mortgages to meet the demands ; I do not mean to say that some banks could not, but a large proportion could not, in my judgment.

Q. Have you any means in the department, of ascertaining when many of these mortgages were taken, whether in high times of real estate or since the fall in prices ? A. Well, we have to a certain extent ; my judgment is based upon facts, as far as I have got them, that the large bulk of the mortgages held by savings banks was taken prior to the panic ; I don’t mean to say all, but a large proportion.

Q. When real estate was high ? A. When prices were high, and some of them prior to that ; banks hold mortgages that have been running a great many years, some of them.

Q. Now, with that condition of things in savings banks holding these large amounts of mortgages, do you, Mr. Ellis, consider it unsafe or inexpedient for such a savings bank to transact its business ? A. No, sir, I do not ; if the bank is let alone and managed in its ordinary way, and treated as in ordinary times, the great bulk of the savings banks of the State, in my judgment, would come out all right, but if the arbitrary rule is enforced to-day, I should rather have my money somewhere else.

By Senator COLE :

Q. You mean by that you think they would not succeed ? A. I do not think they could ; the moment you destroy confidence in the system, or in a particular bank, it is gone.

Senator WOODIN — Mr. President, it is now within a minute or two of 6 o'clock, and I move to extend the time until 7 o'clock.

Senator SCHOONMAKER—I move as an amendment that it be extended to 8 o'clock.

Senator WOODIN—I accept the amendment.

Senator COLE—I desire to amend it by making it 9 o'clock.

Senator WOODIN—I withdraw the acceptance.

Senator STARBUCK—I move we now adjourn.

The PRESIDENT — There being no objection the Senate stands adjourned to 10 o'clock to-morrow morning.

The Senate thereupon adjourned to Tuesday, August eighth, 10 A. M.

SARATOGA SPRINGS, *August 8, 1877* — 10 A. M.

The Senate met pursuant to adjournment, a quorum being present.

Examination of *De Witt C. Ellis* continued:

By Mr. MCGUIRE:

Q. The Bond Street Bank is one of the banks mentioned in the communication of the Governor; do you know of that bank having a mortgage of \$50,000 as a part of its assets? A. A mortgage of how much?

Q. Fifty thousand dollars, upon which there has been a payment of a certain sum? A. I was so informed by the receiver.

Q. You never saw the mortgage yourself? A. I never saw the mortgage or property, except to pass over it once.

Q. There is one question I wish to ask you in regard to the Third Avenue Bank which I omitted to ask you yesterday; after learning the condition of the market and your conversation with the gentlemen you mentioned yesterday, did you, in fact, believe that the closing up of the Third Avenue Bank at that time would be disastrous to the financial interests of the city of New York?

Mr. TRACY — Mr. President, before that question is answered, I desire to object to it, as both leading in its form and also on the ground it is immaterial.

The PRESIDENT — In answer to the objection made by the counsel for the State, the chair will say the question is undoubtedly leading, but the Chair prefers to submit the matter to the Senate as to whether the testimony of the witness shall be received in answer to the question put.

Mr. TRACY — Mr. President, the objection is both as to the form and also upon the ground it is immaterial.

The President submitted the question to the Senate whether the testimony should be received, and it was decided in the affirmative.

Q. Answer the question, then, Mr. Ellis? A. That was my judgment.

Cross-examination of *De Witt C. Ellis*.

By Mr. TRACY :

Q. Will you state what particular mischief you then thought would flow from the act of closing up this Third Avenue Savings Bank?

A. In the then excited state of the public in regard to the financial institutions —

Q. [Interrupting.] Now, the question is, what the mischiefs were that you thought would result.

Mr. McGUIRE — Mr. President, I submit the witness has a right to answer the question.

The PRESIDENT — Undoubtedly he has.

Mr. TRACY — I would like to have him do it.

The WITNESS — My impression was — my conviction was — at the then excited condition of the public mind in New York, in regard to the moneyed institutions, that the closing of a bank like the Third Avenue Savings Bank, at that time, under those conditions, would create a general run on the Savings Banks of New York and other moneyed institutions and result in a general panic.

Q. It was then your conviction, if you closed that bank, it would make a run upon other savings banks and also a run upon other monetary institutions? A. Yes, sir.

Q. Did you, in your judgment at that time, reflect upon how long you might wait before that great peril, which you feared, would be imminent? A. I do not think I estimated it by any days or weeks.

Q. At what time was it you came to this conclusion that those bad consequences would flow from closing it then? A. It was at the time I consulted with these gentlemen after the failure of Duncan, Sherman & Co.

Q. Give the month and date? A. About the first of August.

Q. A little before the first of August? A. About that time.

Q. Did you then think how long it would be necessary to wait in order to preserve it from these crises? A. I do not know as I gave the duration of time any particular thought at that time.

Q. Has the condition of the market not been chronic since the fall of 1873? A. Not as much as that; there has been an apprehension all the while.

Q. Have there been any runs upon the savings banks since the fall of 1873, in New York? A. There was, more or less, a run in the fall of 1875, at the time this bank was closed.

Q. I am asking before that; was there any run after the panic of 1873 commenced? A. No special run that I remember; nothing that you could call a run, that I remember.

Q. You closed this Third Avenue Savings Bank at what time? A. September, I think.

Q. Eighteen hundred and seventy-five? A. Yes, sir.

Q. Was that followed by any run on savings banks in New York? A. Yes, sir.

Q. Which bank? A. A great many of the banks; I cannot distinguish any particular one; I do not think there was a general run as there was in 1873, but there was a run and a sudden withdrawal of deposits from a large number of banks.

Q. Did any other mischiefs arise from it than that which you observed? A. Not particularly.

Q. The other banks were not affected, were they? A. It resulted in closing up some six more that same fall.

Q. You think that run resulted in closing them up? A. I think so.

Q. Were they banks you found to be insolvent? A. They were small banks.

Q. Did you find them to be insolvent? A. I found a deficiency in their assets at the time they were closed up — most of them.

Q. Did you find in all of them that there was a deficiency of assets, so that depositors would never get all their money back? A. I do not think they ever will in the hands of a receiver; if they had been allowed to have gone on, they might have sold some of them.

Q. You predict that; does that mean if a bank was \$219,000 short and had been insolvent for a year or more, as you have sworn, before it was closed, how was that bank ever going to get any better? A. Probably never would, under the present circumstances, unless the trustees made up the deficiency.

Q. Had you any anticipations that the trustees would, out of their own private funds, give \$219,000 to the bank? A. Not much.

Q. Had you any? A. It is possible they may have done it.

Q. Had you any opinion at all that that would be done? A. I had an opinion that it could be done; I say, I had but little faith it would be done.

Q. Did you have any faith it would be done? A. I had not much faith.

Q. Had you any? A. I had some.

Q. Mention some of the men that you thought would put in the

money ? A. I had some talk with the officers about it ; I cannot give the name of any man.

Q. Can you name any man that would have given towards it ? A. I cannot say.

Q. Can you call to mind any man that you then thought would have given any thing towards such an end as that ? A. I cannot particularize any man in reference to it ; it was to be the action of the board of trustees, if anybody.

Q. You had some faith, but you cannot call to mind any man that would give that support ? A. No, sir.

Q. Did you think any mischief would come to a good, sound savings bank, by having a run upon it ? A. I think it might if it was a long continued, general run ; that would force the bank to sell its securities, and flood the market with securities ; depreciate them.

Q. Unless they stopped payment ? A. Yes, sir.

Q. If a bank was sound, and had a run and paid as long as it could and then stopped, no harm would be done ? A. There might be a good deal of harm done by that ; it is no particular credit to a savings bank to have a long run upon it and discredit it.

Q. What depositor suffers by that operation ? A. He suffers if he draws out his money, by loss of the interest ; he gets his money.

Q. Those behind get theirs too ? A. If it is continued long enough so that the bank has to go into liquidation, the last ones might not come out so well.

Q. If they stopped payment, and sold their securities and realized upon them, without any wasteful haste, are not the depositors perfectly safe ? A. You have made that very conditional — if they stopped payment — they cannot stop at a certain time, without being subject to an action of law for depositors.

Q. Suppose they are ; I want to see how the depositors are affected ? A. When I speak of a bank, I speak of depositors.

Q. How would the depositors suffer from a sound bank being run until it could not furnish the money and had to stand back upon its securities, and stop payment ; would not depositors lose by that ? A. When they stop payment it is only for a certain period ; for instance if they sell their best assets, the available assets, and fall back upon their real estate and bonds and mortgages, it might trouble the bank very seriously to meet their obligations ; of course, they cannot convert their bonds and mortgages and real estate as readily as they can government bonds.

Q. They get down in the bonds and mortgages and real estate which cannot be speedily sold to advantage ; it is like a large stock of goods and takes time to work them off ? A. Yes, sir.

Q. The depositors do not lose a dime? A. Not up until that time when they resume again, as they have got to under the law ; if they cannot realize fast enough, they have got to do as some banks have done ; they have to have a receiver appointed ; and then there is a certain loss.

Q. That is a certain loss ? A. In almost all cases.

Q. You know that receivers are appointed by courts of equity, for the benefit and protection of the creditors of the institution? A. I am aware they are appointed to take the assets and dispose of them and to distribute the avails among the depositors.

Q. Are you aware they are appointed by courts of equity with a view of benefiting the creditors ? A. Undoubtedly.

Q. Are you aware, also, that the receiver acts constantly under the supervision of the court as to his power to sell and the like ? A. He is restricted to some extent, I suppose.

Q. Then are you not aware that sheriffs sometimes have to sell on a certain day on an execution, but receivers do not ? A. Yes, sir.

Q. Are you not aware that railroad companies, to some extent, in this State, and very much in other States, have been in the hands of receivers for several years ? A. Yes, sir.

Q. For the better preservation of the rights of the creditors? A. They are allowed to go on and do business in the hands of a receiver ; it is not a parallel case with a savings bank.

Q. Is it your judgment that receivers are destroyers of the interest of depositors for whom they are appointed? A. I think the result shows that a receivership is very disastrous to the depositors in a savings bank.

Q. Name a bank where the receivership has been a harm to the bank or depositors ? A. I speak, in the first instance, of the Third Avenue Savings Bank.

Q. In what respect ? A. Real estate was sold for twenty cents on the dollar ; the receiver told me that he sold a burglar-proof safe for seventy-five dollars that cost the bank over \$3,000.

Q. Do you suppose you could take it and sell it for \$3,000? A. I could sell the lock for \$500.

Q. Mention any other ? A. There was a bank building sold for some thirty cents on the dollar of its cost.

Q. Of its inventory cost ? A. At less than half you can put it at to-day.

Q. Do you think it would sell for more to-day? A. Yes, sir ; it sold for more afterward.

Q. At a private sale ? A. Yes, sir ; at quite a handsome advance.

Q. Did you foresee these consequences when you had the Third



Avenue Savings Bank put into the receiver's hands? A. I predicted the results substantially.

Q. Why then did you let it have a receiver? A. I could not help myself.

Q. You did not want to have it done, did you? A. I do not like to see any savings bank go into the hands of a receiver, but it seems to be necessary sometimes.

Q. What? A. It seems to be necessary sometimes that they should.

Q. You signed a recommendation that it should be done? A. Yes, sir; I made the application.

Q. Did you think Mr. Carman was a very good man for a receiver? A. Mr. Carman was very well recommended.

Q. The question is whether you thought he was a good man for the place? A. I did not think much about it.

Q. And weren't you anxious to have a good receiver? A. Yes, sir.

Q. Did you think he would make a good receiver? A. I don't know as I thought much about it; I had nothing to do with the appointing of the receiver; there was not much talk about it one way or the other.

Q. Were you not aware that he had signed and verified the report of January previous, representing the bank to be very good? A. I knew the fact that he came into the bank as secretary about the twenty-fifth of December, some five days before the date of that report; at the time the receiver was appointed I do not know as it occurred to me any thing about the report.

By Mr. CHAPMAN.

Q. What is that? A. I say that the receiver was appointed at the time the application was made for the receivership; I do not know that it occurred to me about his signing that report; afterwards it was discussed, and I learned the fact about it.

Q. You were acquainted with him? A. I knew him by sight.

Q. You knew he was the secretary of that bank? A. I did.

Q. Name some other savings bank where the depositors have suffered, in your judgment, from the appointment of a receiver? A. I think the property they owned, that belonged to them when the bank went into the hands of a receiver, in almost every instance, it has sacrificed it, more or less.

Q. I asked you to name a bank, if you please? A. I will name them all.

Q. Name one? A. The People's, The Mutual Benefit, The Bond street.

Q. Is it your judgment that the depositors in those banks were injured by the appointment of a receiver rather than to have the bank run on ? A. I do not know as there is any better way to close it up, if you are to close it up.

Q. Whether they were injured by it, and it would have been better for them to have gone on without having a receiver ? A. I think, so far as the receiver is pledged to sell the property and realize in these times, it is injured to that extent.

Q. Do you think it better, in your judgment, if they had not had a receiver ? A. That is a problem ; I cannot answer that ; it might have been better, and it might not.

Q. You have no opinion on that subject ? A. As I said before, it is problematical.

Q. As you have given several opinions, I would like your opinion upon that ; whether, in any one of those cases in your opinion now with all the lights you have before you of the past, sir, your present recollections upon the subject, do you think now it would be better for any one of those banks to have gone on without a receiver, and if so, name the bank ? A. Some of those banks, if they could have been carried over the present depreciation—ordinary times and ordinary conditions—I think, perhaps, it would have been better for the depositors.

Q. Name one of them where it would have been better for the depositors if the receiver had not been appointed, in your judgment ? A. I think in the case of the Bond Street bank ; for instance, if the depositors had not lost confidence, and had kept right along in the ordinary course of things, they might have disposed of their real estate in time at much better advantage than it would be now at a forced sale.

Q. It has not been disposed of yet ? A. Only partially ; in some foreclosures property brought almost nothing comparatively.

Q. Can you name any other than the Bond Street of which you have this opinion, that it would have been better for them not to have a receiver ? A. The German of Morrisania.

Q. You think that would have been better off without a receiver ? A. I think the depositors would have fared better.

Q. Name another ? A. The Security ; it turned out afterwards it was a fraud.

Q. Give us another, if you can ? A. The others that I now recollect had not as good a chance to succeed as these banks had, although they might have succeeded possibly.

Q. You are not inclined to name another one which you think, in your judgment, would have been better without a receiver ? A. I do not recall any such.

Q. Do you recollect the trustees of the bank in Bond street proposed to close it up ? A. We had a consultation together and discussed the whole matter.

Q. And they passed a resolution to close it ? A. Yes, sir.

Q. And you think they would have done better if they had not passed the resolution and gone on ? A. I do not say positively they would ; perhaps they might ; it was one of those banks that had a handsome surplus, taking the real estate at cost at the time it was closed up ; it was not available ; when I say that, I say that as a man does his own business ; he may have doubts which is the best policy in regard to his own matters ; if he exercises his best judgment, he must take the consequence.

Q. The trustees of a savings bank are not managing their own business, but the business of the depositors ; are they to be concerned in financial questions of the world at large or only as to the depositors ? A. Their first object would be to take care of their depositors.

Q. In contemplating your own duty as superintendent as to a particular savings bank when, the question arises, it is weak or insolvent, or has a large deficit, and the question comes up to you whether it is to be closed or not, do you think you are at liberty to ask what effect it will have on the Bank of Commerce and of the Seamen's Savings Bank ; are you not confined to what effect it will have on the depositors you are dealing with ? A. I don't take that view of it, not in that narrow sense.

Q. Do you have in consideration the effect it would have on New York State bonds or government bonds ? A. I don't take as broad a view as that.

Q. It might effect them ? A. Yes, sir.

Q. Do you consider that ? A. I do not think I would go outside of the interest that I was supposed to be superintendent to protect ; I do not think I should be governed by any influences beyond that.

Q. When the Third Avenue Savings Bank question came up, and the depositors of that bank, did you think yourself at liberty to postpone the immediate interest of those depositors to some general views you have about other savings banks ? A. I think that one bank as a part of the system of banks, would have got—they are all based on a common level—

Q. Do you think the safety of the deposits of the widow or orphan is to be treated with reference to how the Bank of Commerce or the Bank of America are to be affected ? A. I never treated any bank with reference to any poor woman any more than with reference to any other person ; the interest of one depositor is like the interest of any other.

Q. Then you are inclined to think they all deposit in one bank in some measure, do you? A. I did not say that; I did not mean to be so understood and I would say—

Q. [Interrupting.] What is it to this depositor whether another savings bank —

Mr. McGUIRE [Interrupting.] Let the witness answer; you asked him a question and before he answered you asked something else; he stated he made no discrimination between the deposits of a poor woman and a poor man.

Q. I want to bring your attention to it and I want the Senate to have your judgment on the subject, whether in the case of the Third Avenue Savings Bank any interest of the depositors of that bank should be affected by what might be the interest of either, who might be the depositors of other savings banks? A. I felt bound to take in the whole and to be governed and controlled in my action by the circumstances in which I was placed in reference to that bank and the interest of all the savings banks that came under my supervision.

Q. Give us your judgment and give the Senate the benefit of your opinion, whether in the case of the Third Avenue Savings Bank, for example, if you saw the interest of the depositors of that bank would be most likely subserved by stopping its operations there, whether you are going to take into consideration the interests of other people? A. I should take in the interests of all with reference to any particular act; if by doing one particular act in the interest of one set of depositors I would ruin all the rest, I should hesitate very long to do it.

Q. If you found a case which the statute marked out, as it does, where you are to hand the bank over to the Attorney-General, would you in any case that came clearly within the act where they did this or that thing or in a condition to be unsafe, would you in such a case as that hesitate to give it to the Attorney-General for fear some other savings bank might be hurt; if you found in a particular savings bank, that the bank was insolvent and had been so for some months, and that it was doing business in an unsafe manner, would you hesitate to hand it over to the Attorney-General, by your letter, for fear that some other savings bank might be prejudiced by it? A. I might find the bank with a deficiency of assets, and not hand it over to the Attorney-General temporarily, for reasons that might seem to be sufficient for my action.

Q. I would like to have you answer my question; if you found a bank that is insolvent, and has been so for several months and is doing business in an unsafe manner, whether, in that case, you would hesitate to hand it over to the Attorney-General, lest by so doing you

might hurt some other interest? A. I have already stated I might hesitate temporarily ; not as a permanant thing.

Q. Would you ? A. If the circumstances in which those facts came to me, were such as to seem advisable not to do it at once, I might delay ; I so understand the statute, that the superintendent has that discretion.

Q. In the case of the Third Avenue Savings Bank, don't you know the bank was insolvent in July ? A. I know that the examiner reported a deficiency.

Q. Didn't you believe it to be insolvent in July ? A. I did.

Q. Did you not believe it to be insolvent in March ? A. I did.

Q. Didn't you afterwards, when the bank was closed up, verify the complaint, in which you swore it was stated that it had been insolvent a year ? A. That was the presumption from the facts as they then appeared.

Q. That was your opinion, that they had been insolvent a year ? A. Yes, sir ; my opinion was, that deficiency that was reported, could not have occurred since the date of the report.

Q. That it must have been more than a year ? A. I don't recollect that.

Q. If there was a large deficit and you had no faith, the deficit would be made up, and you had it perfectly in your power to hand it over to the Attorney-General, if that is so, why didn't you do it in July ? A. I have already stated.

Q. That there was a large deficit, and no faith, the deficit would be made up and that you had it perfectly in your power to hand it over to the Attorney-General—if that is so, state why you did not do it in July ? A. I have already stated that I took the opinion of these gentlemen that it would be unsafe and inexpedient at that time to close it up ; it was thought better, for the interests of all, to delay while this bank would not suffer particularly ; that it would be for the interest of those other savings banks to wait.

Q. It was upon the advice of these gentlemen ? A. Yes, sir ; I was influenced by their opinion.

Q. You were ? A. Yes, sir.

Q. Having your own deliberate opinion about it, you would not have changed for their advice ? A. I think I should ; perhaps I may have been influenced to that extent ; if half a dozen of those prominent bankers had advised, then I might have acted ; I had a conviction at that time ; it was strengthened by what they advised.

Q. Then, on your own judgment, you would act on that state of things—do you mean to say that ? A. I cannot say if I had been entirely alone, and acting independently, whether I should or should not.

Q. Did you talk with any of those gentlemen about how long you ought to let this thing run on with the Third Avenue Savings Bank before you stopped it? A. Some of those gentlemen made the suggestion how long.

Q. Did you talk with them on the subject of how long to let it run? A. Yes, sir.

Q. Did you make up your mind in July how long you would let it run? A. No, sir.

Q. You did not? A. No, sir.

Q. How long did you let it run after that? A. Until some time in September, about seven or eight weeks, as I remember—no, six or eight weeks; I don't remember exactly.

Q. Did you not let it run until the committee of the bank came up there to have it closed? A. It was not closed until they came.

Q. Had you interfered with their going on in the meantime? A. It would have been closed just the same if they had not come that day.

Q. We will see about that; had you interfered with its operations at all in the meantime? A. No, sir.

Q. Did you ever make any order to them to stop paying out or to stop receiving deposits? A. No, sir.

Q. What time did you meet that committee? A. It was the day the recommendation was dated to the Attorney-General.

Q. September twenty-ninth? A. About that time.

Q. What time of day was it? A. It was in the morning, I should say, from ten to eleven o'clock—along there.

Q. Met them at the department office? A. Yes, sir.

Q. Were they in when you came to your office that morning? A. No, sir.

Q. Did they arrive soon after you got there? A. I had been there some little time, as I recollect it now.

Q. Were there any papers already prepared for this matter? A. I was already engaged in the preparation of this.

Q. What papers were you preparing? A. The letters to the Attorney-General.

Q. On what was your letter based that you were writing the Attorney-General at that time? A. The fact I had, since that report was made, the conversation with the gentleman in New York, and the bank was to be closed; it was only a question of when it was to be done with me.

Q. Will you state now, from your recollection, without troubling you to look it up, what particular information was that letter based on? A. I cannot state what was said and done.

Q. No, you recollect; was it based upon the whole series of events

or fresh information you got ? A. On the general fact the bank had to be closed ; on the examiners' report and subsequent examination of the bank ; all taken into consideration together.

Q. Do you recollect the letter you had on the 24th March, 1875 ; I have here your letter ; I will read a passage for you and ask you if you recollect it :

“ Hon. DANIEL PRATT, *Attorney-General* :

SIR—In pursuance of section 44 of chapter 371, laws of 1875, I hereby call your attention to the condition of the Third Avenue Savings Bank in the city of New York. From the official report made by George W. Reid and W. F. Aldrich, examiners, duly appointed by me to examine into the affairs of said savings bank, it appears that, on the twenty-third day of March last, the liabilities of said bank were \$1,443,112.39, and the assets were \$1,223,886.08, showing a deficiency of assets with which to meet its liabilities of \$219,226.31. From official knowledge, I have reason to believe that the deficiency has largely increased since that date, and that the condition of said bank is such that it is no longer safe or expedient for it to continue its business. I would therefore recommend that you take such proceedings in the premises as may be requisite to close up its affairs. .

Respectfully yours,

D. C. ELLIS,

*Superintendent.*”

Now I ask you — had you any new information about that bank since that report of March ? A. I had the statement of the officers that morning.

Q. You did not get it until you met them ? A. I will say I had the —

Q. [Interrupting.] Wait a moment ; I want an answer to my question ? A. No, sir.

Q. You were preparing a letter when they came in ? A. Yes, sir.

Q. What information had you when you began to prepare that letter, later than the twenty-second of March ? A. I had my books down examining the law and form, and so stated to them when they came ; the letter was drafted after they came in.

Q. What was it you began to do before they came in ? A. I had my books down examining the law and the question of receivership ; this was the first bank I had closed up and I was not as familiar with it as I am now.

Q. Had you made up your mind to proceed upon it before they came in ? A. Yes, sir ; was proceeding.

Q. On what evidence were you proceeding later than the twenty-

third of March ? A. Not any at that time, but while they were there they communicated these facts.

Q. You communicated on the information you had in March ? A. Yes, sir ; all the information I got after that ; the general fact shown in the report was sufficient.

Q. Was there any other report after that time ? A. No, sir ; except the statement of July first.

Q. Was that a thing that excited your suspicion ? A. No, sir.

Q. Was there any other fact that led you to send it to the Attorney-General that morning, except the information you got in March ? A. I don't know of any.

Q. In your opinion, at that time, had the financial excitement and the chances of a run gone by ? A. It had to a very great extent ; there was an entirely different feeling in the city of New York.

Q. And so you thought it would be safe then to have this bank closed up ? A. Yes, sir.

Q. Were you aware that bank had kept its doors open and received and sent out money ? A. I assumed that ; I knew nothing to the contrary.

Q. Did it occur to you that a great many old depositors drew out their money at par, and new depositors lost on their money ? A. I assumed they did business in the usual way.

Q. Did it not occur to you that a great many old depositors drew out their money at par and new depositors lost their money, or the new depositors got less than par ? A. I knew that was the fact.

Q. Did it ever get into your mind ; did you think of it ? A. I think very likely I did ; I have no reason to think it did not.

Q. After March you did go to New York ; the latter part of July ; about the time of the failure of Duncan, Sherman & Co. ? A. I did not say that ; I did go to New York two or three times prior to that.

Q. Did you go to this bank ? A. I don't think I went into the bank ; I saw the secretary.

Q. Where did you see him ? A. I saw him in Albany.

Q. Mr. Carman ? A. Yes, sir.

Q. When did you see him in Albany ? A. I cannot give you the exact date ; it was prior to the July deficit.

Q. Was it in May or June ? A. My impression would be that it was in June ; I am not positive.

Q. You saw him there ? A. Yes, sir.

Q. In Albany ? A. Yes, sir.

Q. Then you were in New York a number of times in that period, I suppose ? A. Yes, sir.

Q. Do you swear you went to this bank once in that period ? A. I don't think I did go into the bank.



Q. Did you send anybody ; Reid or Aldrich, or anybody, to examine it after March ? A. No, sir.

Q. Will you state to the Senate ( use your own form of doing it ), why you did not do any thing about that bank after March, clear down to the period when you closed it ; before your alleged conversation with these gentlemen in New York ? A. Do you want I should go all over that ?

Q. No ; over that period ; March, April, May, June and July. A. I can give you the history of it.

Q. I would like to hear it. A. At the time the report when I first saw it, it was examined by me and my deputy ; we saw the condition of the bank by the report ; we had a consultation as to closing it up ; we both agreed it ought to be closed up—would have to be closed up as I recollect it now ; we had some conversation about it and I suggested the Legislature was then engaged in framing a general savings bank act under the constitutional amendments ; there were some new provisions in it ; one in regard to the merger of small savings banks with others ; there was a provision of that kind in the law ; I suggested to Mr. Lamb, my deputy, as I now recollect it ; I give the substance of it ; I do not pretend to give the words—that undoubtedly the closing of the Third Avenue Bank would be followed by the closing of a good many others—small class of banks in New York ; that the times were turning against them, and that the failure of an old bank like the Third Avenue Savings Bank, would probably precipitate the others into the hands of a receiver and it occurred to me if this bill became a law, that possibly a good many of these smaller banks might be merged—absorbed by the larger ones under that provision, and save the depositors in that way ; and it was with that idea that delay was then had ; the bill did become a law and that provision was adopted in it ; immediately after the adjournment of the Legislature, within two or three days, I think the twenty-eighth of May, I went to New York, in regard to this matter, I went to New York to consult with the bank men of the small and larger banks in regard to this question of merger, and visited a good many of the institutions ; some were friendly to it and some did not think much of it ; some of the smaller banks were willing to be absorbed or turned over if they could make satisfactory arrangements ; some of the larger banks thought it was possible and others did not, and the matter was left for further consideration ; I think I went again on the subject ; at one time it looked as though there might some good result from it ; that some good might grow out of the doctrine of merger ; the saving of these small banks ; and it was to get a final determination that I went to New York at the date of Duncan, Sherman & Co's. failure, when I had the conversation with these

gentlemen; that was to dispose of the question finally; I have no doubt if it had not been for the panic caused by Duncan, Sherman & Co's failure, the bank would have been closed at that time, for we failed to make satisfactory arrangement.

Q. I understand you to state that one of the leading features of the new law was for a consolidation of weak banks? A. I said a new feature; never had any thing in the law of that kind.

Q. That was to be done by the courts on the motion of the Attorney-General, under that act? A. That was to be done by the Attorney-General on the recommendation of the Bank Department; I may say I talked with the Attorney-General on the subject.

Q. When was that bill framed? A. I want to answer the other question; I consulted with the Attorney-General on the subject and he recommended me to take this course—to see what could be done.

Q. I did not ask for that; I do not care what the answer is; when was this bill drafted? A. That is pretty hard to answer; drafted all through the session; the bill as introduced into the Senate is entirely unlike the bill that finally passed.

Q. Did you draft it yourself? A. No, sir; I helped draft it in some particulars; I may say there were two drafts of a bill; one a House and the other a Senate bill.

Q. Which one was passed? A. Neither; they were merged; some of the provisions of one were adopted and some of the other.

Q. Was there any other conspicuous new feature in the bill as passed, than those you have mentioned? A. Yes, sir; there was a bill authorizing the Superintendent of the Bank Department to create or refuse to create savings banks.

Q. Without special charter? A. Yes, sir.

Q. Have some banks been created under that? A. Yes, sir; only one, I think.

Q. What one was that? A. Possibly two; I think now on reflection there were two.

Q. Which ones are they? A. One on Long Island and the other down the river somewhere; in Orange county, I think.

Q. Small banks? A. Yes, sir.

Q. In existence now? A. As far as I know; perhaps one of them has not commenced business yet; I may say we refused a charter for one last month in New York city.

Q. When was that bill passed as you recollect; May seventeenth? A. Some time along there.

Q. May seventeenth? A. I don't remember.

Q. Why did not you act between the twenty-second of March and the seventeenth of May, on this Third Avenue Savings Bank? A. I have said it was because of the provisions in this bill which were then

being considered by the Senate and House in reference to that question of saving the smaller banks.

Q. Had you any idea the Third Avenue Savings Bank could ever be saved under that bill? A. I had not much faith.

Q. Had you any? A. I cannot say that I had; it was not so much in reference to that particular bank as the others.

Q. The time you talked with the gentlemen in New York was along near the first of August; the latter part of July; with Mr. Sisco and others? A. I think so, sir, I should say about the twenty-ninth or thirtieth.

Q. Then your conversation with Mr. Sisco and those other gentlemen had no effect upon your mind to prevent your action before the conversation occurred? A. No, sir.

Q. This had been a law since the seventeenth of May? A. I don't know the date.

Q. That is the date; you had no confidence the Third Avenue Savings Bank was going to be benefited by that law? A. Not much; I had more particular reference to the other class of banks.

Q. Will you state, now, why you did not act between the seventeenth of May and the first of August on the Third Avenue Savings Bank? A. I have already stated that I was negotiating to try and apply the provisions of this act.

Q. You were negotiating to try and apply the provisions of this act to the Third Avenue Savings Bank? A. To any bank; I don't know that the Third Avenue Savings Bank was spoken of any more than any other bank.

Q. Then you omitted to proceed against the Third Avenue Savings Bank, because you were negotiating about some other bank? A. I have already stated that in substance.

Q. Did you remark yesterday, in your testimony, that some petitions, you understood, came from depositors of the Third Avenue Savings Bank to have it go on, or did they relate to some other bank? A. Not in relation to the Third Avenue Savings Bank.

Q. What bank was that? A. The "German" of Morrisania.

Q. I would like to ask you, right here, if you saw the petition? A. I think I did see one petition.

Q. Where is it now? A. I could not say.

Q. Is it in the department? A. Never came to the department; went to the Attorney-General; the action was with the Attorney-General, in regard to that matter; he had the matter in his hand at that time.

Q. Can you name any signers on that petition? A. No, sir.

Q. Can you name one of them? A. I cannot; it was a matter with which I had nothing to do—over which I had no control.

Q. Do you recollect this passage, which will be found on page 30 of the proceedings:

“The examination of the bank made by the department, in 1875, showed conclusively that the interest of the depositors required the bank to discontinue business, and on my recommendation the Attorney-General commenced an action and placed the institution in the hands of a receiver. Whether it would have been better had a receiver been appointed in 1871 instead of 1875, is a question mostly speculative.

At a meeting of the board of trustees of the Third Avenue Savings Bank, held at the banking-house on Tuesday, September 28, 1875, at 7½ P. M., were present—Daniel Bates, president; Messrs. Brums Moulton, Seiter, B. A. Lyon, Hartt, Pegg, Ford and Harrison.

On motion of Mr. Brums, and seconded by Mr. Ford, the following resolution was unanimously adopted:

*Whereas*, The recent pecuniary embarrassment of this bank, arising from the long-continued stagnation of business, and the consequent continued depreciation in the value of the securities and real estate held by the bank, render it evident that the bank cannot safely continue business or offer a reasonable security to those who deal with it; therefore,

*Resolved*, That it is expedient that the bank be dissolved, and its business affairs wound up.

*Resolved*, That the officers of the bank be authorized to take the advice of the Bank Superintendent upon the best mode of effecting such dissolution, and that they be empowered to take all such steps in the matters as they may find for the best interest of the bank and its depositors.

*Resolved*, That any new moneys hereafter received on deposit be kept separate and in trust for those making such deposits.

W. S. CARMAN,  
*Secretary.*”

A. I do.

Q. What examination of the bank made by the department in 1875, did you refer to in this report; was it the examination of March 1875? A. I have no doubt of it; there was no other made.

Q. Then you intend the Senate to understand that when that examination came to you it showed conclusively that the interest of depositors required the bank to discontinue business? A. I intended to convey the impression the language contained.

Q. “Showed conclusively that the interests of depositors required the bank to discontinue business;” you say you never made an order to them to suspend business in any form—suspending payment or

business in any form ? A. No, sir ; suspending payment would have been equivalent to closing the bank, after the legal limit expired they might just as well closed the bank up.

Q. Sixty days ? A. Whatever the time was.

Q. Suppose you should issue an order to a bank finding that "you are apparently insolvent; I order you to desist from receiving or paying out deposits for the present" you can do that; you have power to do that ? A. Yes, sir.

Q. Did you do that in this case ? A. I say that it is equivalent to closing it up ; that is closing it up.

Q. Did you do it ? A. No, sir ; not in that form.

Q. Does that put it into the hands of the Attorney-General ? A. It is equivalent to it ; it is not the legal step towards it.

Q. Are you not aware that the law provides that when you do make an order of that sort and they do not obey it, the disobedience of the order is an occasion for putting them into the Attorney-General's hands ? A. Yes, sir ; not in a case like this ; it was not in the case of doing business in an unsafe manner.

Q. Do you consider it safe for them to take deposits of people they can never pay ? A. That is another question.

Q. Do you deem that legal ; is it not illegal for them as much as it is for an executor or guardian of real estate to buy a railroad or bank share for investment ? A. I don't think it is.

Q. Not illegal ? A. No, sir ; I don't think it is illegal ; I think if the Legislature meant to say a bank should be closed up when it showed a deficiency they would have said so in language.

Q. Do you think it legal for a bank when its trustees know it is insolvent and know perfectly well that the men who put their money in there cannot get it back at par, do you think it is legal for them to take their money ? A. It might not be justifiable, but I do not think there is any thing in the law to make it illegal.

Q. I do not know what you mean by legal ; do you think it legal for the guardian of a minor to invest his money in bank stock ? A. I think it is legal for him to do what the law requires him to do ; I am not giving legal opinions on a subject I do not know any thing about.

Q. Do you think it is legal in them to receive the moneys of these depositors when they never are going to get it back again ; when they *know* it ? A. There is nothing abridging a savings bank taking deposits even if it has a deficiency of assets ; every new bank closed up summarily would have a deficiency without the action and intervention of the trustees themselves.

Q. You recollect the law requires these things shall be done not only in strict conformity with the requirements of law, but with safety and

security, and that it must be safe to transact business? A. That relates more particularly to the character of their investments—whether they conform to the law or not—and other methods of procedure; not to the fact particularly of insolvency or solvency: a bank may have a deficiency of assets—may be robbed over night—and yet have done its business in a safe, prudent manner.

Q. Suppose you had a bank on your hands, and you found it was insolvent and could not pay fifty cents on a dollar; that it was a clear case, and that they were going on receiving deposits, don't you regard that as illegal in these men? A. I do not say illegal; I should not regard it as a prudent business transaction.

Q. You would not regard it as honest in them? A. If they really believed they could not do it?

Q. Yes; would it be honest in them if they could not get back their deposits at par; if the depositors could not get the deposits back at par? A. That would be a question for them to answer; I should not be disposed to do it myself, I think, if I was managing a bank.

Q. Why not? A. I do not know as I can tell you except in a general way, that I should not care to take the responsibility particularly as a trustee.

Q. You spoke about the difficulty of understanding the value of mortgaged property; you remarked, I think, yesterday that there must be a great many thousand mortgages belonging to savings banks? A. Yes, sir.

Q. And that it requires a great number of persons to examine them; I suppose, in fact, you never do examine into the validity of mortgages and the value of the lands? A. Examine the validity of the mortgages; we examine the abstract.

Q. As to the value of the land mortgaged? A. Except, perhaps, in a few instances; generally we do not; never have.

Q. Therefore, why did you say yesterday, on the stand, if all the mortgages in the savings banks in this State were foreclosed, and the property sold, it would break most of the banks? A. I stated that was my best judgment; that judgment is based upon the experience of the last year or two, when the foreclosures have been made by these institutions and other moneyed institutions.

Q. Do you not understand that all savings banks have loaned money upon property worth twice as much as the loan at the time it was made? A. I do.

Q. And if they are vigilantly managed no taxes and arrears of assessments gets against the land; do you mean to say generally—good real estate on which there is a mortgage—that real estate has fallen fifty per cent in the State of New York? A. I mean to say the foreclosures,

as made by these receivers, have not averaged fifty per cent on the appraised valuation when the loan was made.

Q. Have you looked into that? A. Yes, sir; and in some cases they have not brought twenty cents on the dollar.

Q. Because it was all eaten up with taxes and assessments? A. No, sir; the bids were not enough; I got the facts of the receiver of the Bond Street Savings Bank the other day, and I will give them to you if you wish.

Q. Give them? A. It was property in Middletown on which the bank had loaned \$20,000 or \$21,000, \$20,000 I think; he foreclosed it, advertising in the usual way, and got permission of the court to bid it in at \$16,000; he held it and expended a thousand or two dollars upon it, and Saturday, under the order of the court, put it up and resold it and got \$6,000 for it.

Senator COLE—Six thousand five hundred dollars.

The WITNESS—Six thousand dollars or \$6,500; cost \$21,000, he told me; for that he has realized about \$6,000.

Q. That was an extraordinary case? A. No; I will tell you another.

Q. Let us hear the other? A. He had a mortgage on seventy acres of land on the Hudson river, at Cruger's station; the station is on the farm; portions of that farm were sold some time since for \$1,000 per acre for villa sites; he had a mortgage on the seventy acres of about \$20,000, as I remember.

Mr. CHAPMAN—It was \$50,000.

The WITNESS—It had been \$5,000.

Mr. CHAPMAN—It was paid down to about \$20,000.

The WITNESS—Yes, sir; paid down to about \$2,000 before he became in possession of it; he foreclosed the mortgage, as he told me; advertised it up there and in New York extensively; went up to the property and offered it for sale; said it was good farming land, tillable land, too, and he never got a bid for it; he adjourned the sale; got an order of the court to bid it in if it did not bring what he thought was a reasonable price; at the adjourned day of the sale he bid it in himself without any other bid, for some \$6,000—less than \$100 per acre—while portions of the same land had theretofore been sold for \$1,000 per acre.

Q. Do not New York city savings banks have mortgages on New York city property? A. Yes, sir.

Q. Have you not heard receivers here testify that mortgages they had were good? A. In some cases.

Q. Interest paid and principal too? A. I did hear that; that was where the mortgagee paid up the mortgage; it was not a forced sale.

Q. Repeatedly, they said ; you understand now by your information, that if all the mortgages in the savings banks of the State are put on foreclosure, it will break the banks ? A. I think it will be very likely to ; that is my judgment ; that is, if collections were all forced at once ; I do not believe there are a great many banks that would pull through ; I think they would have the real estate instead of the mortgages ; they could not certainly pay with them.

Q. What position did Mr. Smith hold in your office ? A. Clerk ; he was clerk there when I went into office, and is yet.

Q. What is his particular position ? A. He is called "accountant."

Q. Was he the principal clerk ? A. So regarded him.

Q. The deputy was a man who had been there before you came into office ? A. No ; not the present deputy—Mr. Lamb.

Q. Mr. Lamb's office of deputy, is an office which, by law, authorizes him to take your place when you are out ? A. Yes, sir.

Q. What is the practice in your office when reports come in from examiners or from savings banks ; what is done with them ? A. I think the routine is that when reports come in, one clerk files them ; then it goes to the accountant for examination.

Q. That is the regular course ? A. That is the ordinary course.

Q. Mr. Smith was the accountant ? A. Yes, sir.

Q. Goes to him for examination ? A. Yes, sir.

Q. After he has examined it, what does he do ? A. If he finds any thing unusual in it he submits it to the deputy or to me if I am there.

Q. Does he tabulate them ? A. He and the other clerks ; he foots up the columns and looks at the items to see if they are put in their proper places, and sees if there are any clerical errors in the figures and all that sort of thing.

Q. Does he look to see if the figures are too high ; the prices of things ? A. Not generally.

Q. Suppose he finds any thing — any estimate that looks too high — does he not call your attention to that ? A. He might ; or he might make a note on the margin of the report and have it sent back for explanation ; some thing of that kind ; it is a very common practice to send back these reports for correction at various times.

Q. Do you recollect a letter from Reid to you on the 24th of March, 1875, about the Third Avenue Savings Bank ? A. Accompanying his report ?

Q. Yes ; it was the day after ; it came with the report. A. I think it came with the report ; that is my best recollection.



Q. Do you recollect this at the conclusion of the letter : "I do not think the depositors will receive more than fifty per cent on a dollar ?" A. I remember that ; I may say I thought from the examination of the assets afterwards that they ought to pay more than that.

Q. When did you examine their assets afterwards ? A. The statement made by the receiver when he deposited the securities with the trust company — I was looking it over then, and I thought the bank ought to pay sixty-five cents on a dollar ; that was my judgment.

Q. You had no information at all until the receiver was appointed ? A. Had no information at all from the record.

Q. You heard of Mr. Carman's being removed from the receivership, did you not ? A. Yes, sir.

Q. Had you any thing to do with it ? A. No, sir.

Q. Mr. Ellis, were you not somewhat influenced in your judgment of letting the Third Avenue Savings Bank go along out of respect or appreciation of the men who managed it ; did you consider the quality of the men as a good sign ? A. I did not know personally any of the men ; all that I knew about the officers of that bank and the men was what I gathered from the report ; I never met an officer of the bank, except Mr. Carman for about five minutes, prior to the making of that report of Reid's.

Q. Had you not heard through Reid that some of these men that had gone on the bond were not going to respond ? A. I remember what was in his report about it ; that is all the knowledge I had on the subject ; I might say no complaint was made against the men or bank prior to the time of its being closed up from any source whatever.

Q. Mr. Ellis, when there is a falling market of securities, various bonds and mortgages, stocks — on a falling market for some length of time — is not that an occasion for your being more careful to watch after the bank in respect of their affairs ? A. I should say so ; it is pretty hard to keep up with the fluctuations, though, sometimes ; it is pretty difficult in these times to keep up with all the changes with all the institutions ; it is pretty difficult for individuals to forecast the future and keep his securities all safe.

Q. Did you ever visit the "Trades Savings Bank" yourself ? A. Yes, sir.

Q. How many times ? A. Oh, two or three times I dropped in there.

Q. When ? A. My first visit was the time we examined the officers and turned out the president ; re-organized the bank.

Q. Do you recollect the report of Mr. Reid, the examiner, of the 12th of November, 1875 ? A. I do ; I recollect the substance of it.

Q. Do you recollect that it showed a deficiency of assets of over \$6,000, and a deficiency of income, also ? A. I remember the report.

Q. There was a letter accompanying it ? A. Yes, sir.

Q. Do you recollect, after commenting on the deficiency, he says : " One of the loans on bond and mortgage and one on call have the appearance of having been for the benefit of the president, although this is denied by the secretary ? " A. I remember the fact.

Q. You stated you did nothing about that bank for some time after that ? A. I did something about it.

Q. When did you do any thing about it ? A. I think, immediately.

Q. What date ? A. I think that was the time the secretary came to Albany, and he was required to make it good.

Q. You wrote him a letter on the 25th of December ? A. Yes, sir ; that was after he was up there.

Q. What happened when he was up there ? A. I called his attention to the matter that if they wanted to go on and do business they must make up the deficiency, and that I did not propose to let them go on unless they did ; and he said they could and would, and the president felt very sanguine ; that they would take care of the expenses of the bank themselves until the bank was self-supporting.

Q. When was that ? A. It was after the report of Reid ; I cannot give the exact date.

Q. It was directly after ? A. I think shortly after ; I think he came on on the suggestion of Reid ; that he found a deficiency in his bank ; it was the practice to call their attention to it.

Q. That was about the middle of November ; the report was the twelfth ? A. I cannot say the exact date.

Q. It was shortly after that ? A. Yes, sir.

Q. Who was the man that came ? A. Mr. Freese, the secretary.

Q. Did he tell you how they were going to make up the deficiency ? A. He said the trustees would make it good by putting in cash or good securities.

Q. Did he say they began doing it then ? A. I think he did ; I won't be sure about that ; I think he said they proposed to do it, and whether they had begun already or not I cannot say ; I can remember the general fact ; I cannot give the precise date or details.

Q. After that one visit, did any thing else occur before your letter of December twenty-fifth ? A. I don't recollect of any thing else now ; I wrote that letter to them the Christmas day I wrote to some others.

Q. I call your attention to the letter of December twenty-fifth, and will ask you to point out in it, if you can, any allusion to their having made any promise to make up the deficiency of assets ; do you find any allusion there to Mr. Freese having come there and

given you assurances ? A. No, sir ; that letter is a copy substantially of all the others, and it was calling their attention to the general fact without specifications, where they had not done what they were already supposed to have done.

Q. In the examination in November, that was ? A. Yes, sir.

Q. Towards the first of January, did you telegraph about this matter ? A. I did.

Q. Have you a copy of that telegram ? A. I have ; oh, I have no copy of the one I sent, but I have the dispatch I received in reply.

Q. We have that here ; you did telegraph them ? A. Undoubtedly.

Q. Was that on the same day ? A. I presume so ; I do not remember.

Q. Can you recall the contents of your telegram ? A. I cannot tell the substance of it ; I presume it was asking if they had done as they had agreed something to that effect.

Q. You don't recollect its contents. A. I don't.

Q. They telegraphed back : " Every thing fixed up as proposed ? "

A. That evidently relates to the conversation we had — " as proposed. "

Q. That refers not to the telegram, but to the conversation ? A. I should judge so ; or both, possibly.

Q. The report of January 1, '76, came from the bank ? A. Came as of that date.

Q. That is the day of this last telegram ? A. The report would not come January first.

Q. It was made up as of that date ? A. Yes, sir.

Q. It showed a surplus of assets ? A. Yes, sir.

Q. When that report came to the department, did you see it ? A. I did.

Q. Did you believe it was true that they had a surplus of assets ? A. I did.

Q. Had you any reason to doubt it ? A. I do not know that I had.

Q. Did you ever doubt it at any time afterwards ? A. We questioned it at one time.

Q. When was that ? A. At the time Reid went there and made the examination ; we questioned the good faith of the transaction as they reported it.

Q. On the fourth of January you got a letter from Mr Reid ? A. I do not remember the date.

Q. On the fourth of January you got a letter from Mr. Reid, in which he stated : " I do not believe that the money has been or can be paid in, and I told him so. " A. It turned out afterwards, though, it was.

Q. Did you get also this letter from Mr. Reid on the thirteenth :

"Freese says every thing has been done in good faith; perhaps so; the entries in the book are not clear enough to convince me;" you had an examination made by Reid on the thirteenth of January? A. Yes, sir.

Q. Then you had another letter from him the nineteenth of January? A. It seems so.

Q. That shows a deficiency of assets again? A. Showed a surplus by crediting them with the assets they claimed, although he did not, at that time, do so.

Q. I refer to the letter of January 19, 1876; it reads: "Yesterday I went up to the Trades; in looking over the books I found nothing to show the trustees had put in a dollar towards the deficiency; it has almost entirely been made up by the enhanced price put upon the Beach street property," etc; what did you do after that? A. After that letter I saw Mr. Reid and had a talk with him about this bank, about these letters that he had written, and whether he could ascertain or not the condition of the bank; he complained that they were short-handed up there, running the bank at very small expense, and that the books were not skillfully kept; I requested him to go up there and investigate it thoroughly, and ascertain, if he could, whether the report was true or not; he did so; he found there was an actual sum on that Beach street property, as they had reported it, the mortgage given as they had reported it; and, by looking over the books carefully, he concluded that their statement was substantially correct and true, and it turned out afterwards that it was correct.

Q. Do you recollect that in the letter of August 2, 1876, he said he went up to the Trades, Freese seemed rather disposed to put him off, saying the books were not posted, etc., and that he wanted to see what he had written, etc.? A. That is in answer to Mr. Lamb's letter.

Q. He rather stands upon his dignity; his account and the president's do not agree upon some points? A. That is the time the action was taken to close up the bank.

Q. You recollect that this was followed by the report of Mr. Reid on the ninth of August, in which he finds that, on his tabulation, the bank had a surplus of sixty dollars and sixty-seven cents? A. I remember the fact.

Q. And his notes were "that one of these mortgages was assigned by Lesley to Freese, and one of them was owned by the bank and no title shown; and as to another mortgage, it was not recorded and no title shown;" when was this bank closed? A. I was away at the time; it was closed on the facts presented in this examination and those letters of that date in August.

Q. Mr. Lamb did it when you were away? A. Yes, sir.

Q. Were the proceedings temporarily suspended afterwards? A. I think they were; it all took place while I was away; they contested the appointment of a receiver and there was some little delay about it.

Mr. CHAPMAN—That was the delay of the Attorney-General's office? A. That was the delay after we reported it.

Q. Give your reasons why you did not stop this bank or wind it up, from the nineteenth of January down? A. I have already stated — because I saw no reason to wind it up; they had complied with my requisition, voluntarily.

Q. You gave some testimony in regard to the "Peoples' Savings Bank," and, after speaking of some of the former proceedings in 1873, came down to a more modern period; I think you said you became satisfied that the deficit proceeded upon originally, had been made good, and it was passed by for the time being; that is, the case where you heard the Deputy Attorney-General speak about it, Mr. Hun, the first proceeding? A. Yes, sir.

Q. After that, this bank went on; do you recollect its report, of January 1, 1874, showed a surplus of assets of only thirty-nine dollars and seventy-three cents? A. I recollect what the report shows; I do not remember the figures; I do not charge my mind with any thing that can be shown by the records.

Q. It was a very small sum; you recollect that? A. Yes, sir.

Q. What date was that? A. The 1st of January, 1874.

Q. July 1, 1874, and October 9, 1874, there was an examination made; do you recollect that fact? A. I recollect the circumstance indistinctly; I don't think you can say there was an examination; I think Reid and I—that is my recollection—were up in that neighborhood, and I suggested that we go in and see how they were getting on, something like that, and we did so—made a personal examination but I saw no figures put down.

Q. Did you leave Reid there? A. I think not; I think we went away together.

Q. How long do you think you stayed there yourself?

Mr. McGUIRE—Mr. President, I think the witness ought to be allowed to finish his answer.

The WITNESS—I have no distinct recollection of the time; it must have been a very short time; as I now recollect it, it was a good while ago; my object in going in was to get a general idea of how they were getting on, and what the prospects were, etc.

Q. Was it part of your object to see how they were getting on, or curiosity? A. It was to ascertain the fact; I did not go there with reference to making a special examination of the bank.

Q. You took Mr. Reid with you? A. We were together.

Q. Mr. Reid was your examiner that you constantly employed ? A. Yes, sir.

Q. And was on the spot ? A. Yes, sir.

Q. Didn't you leave him in the bank when you left ? A. I think not ; I think it was nearly night ; we went down town together.

Q. Did Mr. Reid inform you of the result of his examination ? A. He never did.

Q. Did you ever ask him ? A. I think not ; I think I satisfied myself as to the object I went in there for, and I never saw the statement until I saw it here ; he told me that he prepared it in the office afterward, in his own office in New York ; that it was sent to the Bank Department.

Q. He thinks he gave it to you ? A. No ; he says positively that he did not ; that I never saw it.

Q. Tell us what you examined, and what you looked at yourself ? A. I cannot swear positively about that ; my recollection about that visit is very indistinct.

Q. Did you look at any thing at all ? A. I presume I did.

Q. Do you recollect it ? A. I could not swear positively.

Q. What conclusions did you go out of the bank with. A. In the absence of any further evidence, I should have said my recollection would have been that I was satisfied the bank was in the condition they had reported it substantially ; that they had no deficiency at that time.

Q. Do you say that you came out of the bank satisfied that they were in good condition ? A. That is my judgment—my best recollection.

Q. What was that opinion founded on, that you didn't look at any thing ? A. I presume from conversation with the officers ; what was talked over there ; and Mr. Reid did make some examination when I was there ; looked over some books and papers to some extent ; how much I cannot say now ; it is not an uncommon thing to do that, without making a regular or special examination, to get at some particular facts as appears by their books.

Q. Can you mention any fact that you did look for or found in that bank ? A. I have a very indistinct recollection about that transaction, as I said before ; so much so that I could not swear positively as to any thing that was done there.

Q. Did you see Mr. Reid from time to time after that ? A. I did.

Q. You never asked him about that bank ? A. I do not recollect that I did particularly after that ; I do not recollect.

Q. At any time ? A. No, sir.

Q. Have you not sworn here that you requested Mr. Reid to keep watch over such and such a bank ? A. Yes, sir.

Q. Was the object in having him watch them so as to report to you? A. The object was to keep himself and the department advised, if any thing was changing or going on.

Q. You never asked him what he found about that bank? A. I don't think we had any special conversation about that bank after that date; I do not remember any.

Q. Didn't he tell you at that time there was a small deficiency then? A. No, sir; I find by examining the statement that there was not, if he put everything in it.

Q. A small deficiency? A. No, sir; none at all.

Q. His statement makes it a deficiency? A. It is not a full report; we had securities in the Bank Department that are not in that statement at all, which would more than overbalance the deficiency which he makes.

Q. What was that? A. The trustees' bonds; he put in only part of them; there were two sets of bonds; we held the original bond my predecessor took, and he never saw that; we held the old bonds as against the others who had not put in the bonds in lieu thereof; that there was more than the deficiency.

Q. Those were bonds of men that were dead — of a man that had softening of the brain? A. That was before that time; I do not know whether he had softening of the brain; it was after the time we closed the bank that we had that information; I remember the receiver testified that these were about the best assets of the bank he had; those personal bonds; that he realized the cash out of them, pretty much all, very quickly.

Q. You think you did not go into the bank there with any great anxiety to examine, and did not examine much yourself? A. I do not think we started to go into the bank at all, when we went into that neighborhood; my impression is we were engaged in examining another institution, and that having some spare time we went there.

Q. You did not start out to have that bank thoroughly examined until the examination came around in November, 1875? A. No, sir; that is my recollection.

Q. When that report came in it showed a large deficiency? A. It seems so; there were very great changes going on in those days.

Q. In that year, from the time the old suit of 1873 was discontinued down to November tenth, you had not had any careful examination reported to you or sought any as to the condition of this bank? A. After the suit was discontinued?

Q. Yes, after the suit was brought? A. After the suit was brought, and they agreed to make up—to substitute these bonds—put in the bonds and mortgages; I went there myself.

Q. When did you go there yourself? A. By examining the corre-

spondence, you will see the time I went down there to see if they had done it; they had subscribed the money, and it was partially paid in when they made their report in January, and I was hurrying them up by letter to complete the thing, so that I could go in and see that it had been done according to my mind.

Q. When was it? A. It was after the first of January; I cannot give the exact date.

Q. Was it in February? A. I cannot say; there was some delay owing to the absence of the attorneys, preparing abstracts of title and certificates.

Q. When you went over these securities, did you look to see if the report of January 1, 1874, was sustained, in which they made out their surplus of twenty-nine dollars. A. Yes, sir.

Q. From that time forward, you did not have the bank examined until November? A. I found the surplus more than that when I examined it; I found they had done substantially what they proposed to do in their original proposition.

Q. You verified their surplus as twenty-nine dollars and some cents as of the first of January? A. I do not know as I did in reference to that; I did at the time that I was there; my recollection is, it was considerably more than that; several thousand dollars at that time; the first of January they had not got all these securities in the bank when they made their report, and they increased their surplus considerably from the first of January, as reported, to the time I made the examination of these assets that they had put in.

Q. It is very important to know when you made the examination of the assets? A. I could not give the date, any way, for I have no memoranda.

Q. Can you furnish it? A. I could tell by looking over these letters.

Q. I wish you would give the date? A. I cannot give the exact date.

Q. As near as you can? A. I cannot give the exact date.

Q. Look at the letters and give it as near as you can? A. Here are two or three letters filed in October, 1874, that are dated October 4, 1873; I think it is an error in filing by the clerk; the date of the letter shows when it was written; I do not find anything in these letters that indicates exactly, but I should say from the letters, it seems to have been the latter part of February or in March after that report, because I see there is a correspondence going on between the bank and the department, in regard to this matter, up to that date.

Q. From that time forward you had no scrutiny made of this bank, until the one made in November? A. None, except that one men-



tioned in October, that I remember now ; I do not remember any other.

Q. I will ask you now about another institution ; you are aware the *Loaners' Bank* existed and had a charter in 1874 ? A. Yes, sir ; after the passage of that act ; that was the first knowledge I had of it.

Q. And you found in it it was required to report to the Bank Department ? A. I found in the charter there was a provision.

Q. And you were aware, also, were you not, that all moneyed corporations were bound to report to the Bank Department, by general law ? A. No, sir.

Q. Not aware ? A. No, sir.

Q. Not aware it is in the Revised Statutes that every moneyed corporation shall make a report to the Bank Department ? A. No, sir.

Q. To report to the Comptroller and afterwards to the Bank Department ? A. It is the first intimation I ever had of it.

Q. In respect of this bank, you say you were shown the opinion of William Tracy, to the effect that this institution was not subject to the law of 1875 ? A. Yes, sir.

Q. That was all, whether that was subject to the law of 1875, whether that institution was subject to the law of 1875 ?

Mr. McGUIRE—Eighteen hundred and seventy-four.

Q. In 1874 ? A. It related to that ; that is, that we claim ; we had the power under that act.

Q. Does not that opinion commence by stating "my opinion is asked whether this bank is subject to that act ?" A. Yes, sir.

Q. And his conclusion was, it was not subject to that act ? A. Yes, sir.

Q. And it was put upon the ground it was a banking institution, and therefore an exception ? A. Yes, sir.

Q. Was the Attorney-General's opinion to the same effect, that it was not subject to that act ? A. I see by his report that he says he thinks, under the law, the bound to make a report.

Q. Did William Tracy say so ? A. I do not recollect ; the charter says so, and that is better than any man's opinion.

Q. Did the bank claim it was not bound to report to you ? A. They claimed they had sent up statements every year ; when I first talked with the president, and I never talked with any others of them, he showed me a statement in which he claimed he sent to the Bank Department statements ; all I could ascertain was from a clerk who was there prior to my time, that the bank did send it a very short paper, and Mr. Howell looked at the law, and says he did not think he had any thing to do with that class of institutions, and put it in

the pigeon hole; the law did not make any provision for publishing it in any way; I never saw that paper and do not know whether it is in there now or not.

Q. No report was ever published in regard to that institution in the actual reports? A. None required, none permitted by law.

Q. Did you ever send from your department to this bank any form to draw reports from? A. I never did; no, sir; I should not make other banks pay their expenses.

Q. Did you ever inform this bank it was bound to report to you? A. I informed the president I proposed to test the question.

Q. Proposed to test the question of examination of his reporting? A. To make an examination more particular.

Q. Did you ever require them to report to you? A. No, sir, I did not; I took the position that we had no power over that institution, one way or the other; there was a single bare provision in the charter that they should annually report to the Bank Department, and there it ended.

Q. Didn't you suppose it a part of your duty as superintendent of that department and its head, in your report to the Legislature, to inform the Legislature that one bank had declined to perform its duty—one institution? A. We never recognize it there as a bank.

Q. One corporation bound to report that had neglected to perform its duty. A. I have no doubt I thought if the Legislature meant any thing by that provision they would have put in something by which it could have been enforced; in all other cases they had, and, where they mean business, have put some provision in by which you can force a report; I suppose that was put in for a blind at the time.

Re-direct-examination of *Mr. Ellis*:

By Mr. McGUIRE:

Q. There was no question in your mind but what this institution, under its charter, was bound to report to the department? A. None whatever; the law expressly said they should make an annual report to the Bank-Department, and there it stopped.

Q. The question was as to the power of the superintendent to enforce? A. That was the only question.

Q. Or whether there were any penalties prescribed for an omission to make a report? A. That was the view I took of it; and Mr. Howell, I was informed, took the same view that he had no power—I had no power—in any law that I knew of; certainly not in the charter.

Q. There is no deposit by this institution in the Bank Department for paying expenses? A. None whatever.

Q. Of publication? A. None whatever; no provision by which we may require of them contributions for the expenses of the department, the examinations of banks, and savings banks and trust companies.

Q. In other cases, there are general provisions, if institutions do not make a report that the superintendent shall, in a summary manner, proceed? A. Yes, sir; penalties are provided against a corporation for not making a report.

Q. Which are omitted in this case? A. Yes, sir.

Q. Your attention has been called to the depreciation in real estate and the consequent depreciation in the value of bonds and mortgages; I will call your attention to one or two pieces more, Mr. Ellis; as an illustration of the opinion which you last gave; take the Newburgh Savings bank; I read from the annual report of the Superintendent to the Legislature; the bank reported to the department that "the cost of its banking building and lot was \$122,235.26;" it was the same amount through 1873, 1874 and 1875 down to 1876; I read from the report of 1876, "banking-house and lot, at cost, \$122,235.26;" in the same report, "market value of banking-house and lot, \$50,000;" now, upon the assumption that the real estate covered by the mortgages owned by this bank had fallen in that proportion down to forty per cent of the cost, would it be your opinion that, if they were obliged to convert their assets into money to pay their depositors, whether the depositors could be paid in full, and I select this bank as a strong bank? A. Yes, sir; that is regarded as one of the best banks.

Q. [Continuing.] Upon the assumption that all the real estate has fallen forty per cent of the cost covered by its mortgages? A. What is the amount of mortgages reported?

Q. [Reading.] "Nine hundred and ninety-three thousand six hundred and five dollars, and its liabilities \$2,755,419?" A. How much the surplus?

Q. "The surplus upon the cost price of their investments and real estate \$400,850; the surplus over the par value of stock investments and the market value of the banking-house, \$177,385.28." Assuming that all the rest of the real estate covered by these mortgages were converted into money at this time, what, in your opinion, would be the effect? A. At the same rate they have charged off on the banking-house?

Q. Yes, sir? A. It is a mathematical calculation; it would wipe out their surplus, assuming that they are about the same rate; that will leave a deficiency.

Q. The same rule applies as you have mentioned; it has a general

application to the depreciation of real estate throughout the State?

A. I think it has.

Q. It is not confined exclusively to the city of New York? A. No, sir; I guess every man understands that very well that has any real estate or that is a business man; I do, for one person, in a small way.

Q. Your attention is called to the effect upon depositors putting a savings bank into the hands of a receiver; now, Mr. Ellis, are you not aware that these receivers' sales, even if under the order of the court, are cash sales? A. They must be, as I understand it.

Q. Are you not aware that there is a large difference in the price realized upon the sales of real estate upon a cash sale or one upon time?

Mr. TRACY — Mr. President, I object to that question as rather leading.

Mr. MCGUIRE — Mr. President, I am cross-examining him now.

The PRESIDENT — I think the question may be asked, although it is incorrect in form.

Q. What is your answer to that? A. There is a large difference; no doubt about that; the fact is, these receivers testified here that there was no cash value for real estate under forced sale—no market for it; it is almost impossible to get any price.

Q. And to sell under such circumstances, when there is no market for any cash sales of real estate is virtually a sacrifice of the property? A. It is a sacrifice, absolutely.

Q. No evidence whatever of its real intrinsic value? A. No, sir; I do not suppose you could get any judges of the city of New York—I am speaking now somewhat from experience—to come on the stand and testify before the sale of this property by receivers that the price they got for it was any thing like its true value.

Q. In regard to the savings bank system, your attention was called to that somewhat at length by the counsel. You may state, Mr. Ellis, in what manner you regard the exercise of your power and supervision over savings banks, whether as a system or a whole, or to be applied to each individual case? A. I can give you my views in regard to it, and what influenced my action.

Q. Give it a little more in full? A. When I went into the department first, of course, I was not as familiar as I am now with the law but I informed myself as well and as fast as I could by an examination of the law and the reports, by conversations with my predecessor, by those in the office, and in all ways that I could; and on examination of the law and the precedents established in the office, I made up my mind that the Superintendent's duties related to all these institutions as well as to one particular case; I found 165 savings banks, in round

numbers, created, and doing business in this State, in almost every village of importance and cities, and as I regarded it my duty——

Q. [Interrupting.] How many depositors? A. At this time some 800,000 depositors; the aggregate assets of the banks were \$350,000,000, in round numbers; I thought it was a pretty large subject to treat, as it should be treated with a good deal of caution and prudence; that the Superintendent, by rashness and haste, could do more mischief than he could by care and caution, and I think so now; I think the Superintendent, under the constructions of the law, has discretionary power; I think, without violating the law or the spirit of the law, he could by an indiscreet act work incalculable mischief to the savings banks of the State.

Q. I desire to call your attention specifically to the point you were interrogated about before; in the exercise of your duty as Superintendent, would you regard it as your duty to protect the depositors of a single saving bank at the expense of all the savings banks of the State? A. I should not most decidedly.

Q. Take, by way of illustration, the Third Avenue Savings Bank; if, in the closing up of that bank, in the early part of the year 1873, a few of the depositors of that bank might have been then protected to a greater extent than they are now in the hands of a receiver, you would have regarded it as a prudent and in the line of your duty to have closed it up when you were satisfied that that act would have produced disastrous consequences to the other savings banks of the State? A. Eighteen hundred and seventy-three, you said.

Q. I meant 1875? A. I did not regard it then.

Q. Did you regard it in your line of duty so to do, if you were satisfied that such would have been its results and consequences? A. I did not; if I had I should certainly have done so.

Q. Did you, at that time, Mr. Ellis, regard it as a part of your duty not only to act in such a manner as to protect those depositors, and, at the same time, protect other institutions in like character? A. That is what I supposed to be my duty; that was the construction of the provision of the law which clothed the Superintendent with discretionary power.

Q. And you so acted in the manner in which you did? A. Yes, sir; by an examination of all the laws, in regard to this power of the Superintendent, I think the word is nowhere used "solvent" or "insolvent" bank; my theory of the law is, and I think it has been the theory of the department, that when it shall be made to appear to the Superintendent, when it shall appear to be unsafe or inexpedient to do business, that if it had meant that when it appeared to the Superintendent that there was a deficiency in the bank, thereupon he should close it up or recommend the Attorney-General to; if the Legislature

had meant just that they would so have expressed it in words, but they did not ; they say, "when it shall appear to him to be unsafe or inexpedient"—not whether it shall appear to be insolvent or solvent, but leaving his mind to cover the whole ground ; that is the view I took of it, and I have not changed my mind yet.

Q. Have you not noticed in that law there is no time fixed in which the Superintendent shall give this notice ? A. Yes.

Q. No such word as "immediate" in the law used ? A. No, sir ; no such idea ; no such language expressed as that he will immediately or not, but he *shall* when it shall appear to him ; it is difficult to determine sometimes what is best to do with a given bank under certain circumstances ; my policy has been to prevent, if possible, where the bank was properly managed with proper officers, to prevent, if possible, throwing it in the hands of a receiver ; I believe it to be in the interest of the depositors not to do it, if it can be prevented, and I think any man will find it so.

Q. You answered a question, Mr. Ellis, to the counsel for the State ; whether you fully understood it or not, I do not know ; "under what part of this law of 1871 have you the power to serve an order upon a savings bank to discontinue taking deposits ;" we understood your answer that you could serve an order prohibiting them taking deposits ? A. I mean to be understood to serve an order directing them to discontinue unsafe and illegal practices ; I think there is nothing in the law by which I can prevent their taking deposits, except to recommend the Attorney-General to close them up.

Q. The law is, if you find them guilty of engaging in illegal practices, that you can serve an order directing the discontinuing of such illegal or unsafe practices ? A. That is the language of the law.

Q. Under what portion of that law ; you answered the question—if you understood it—that you could serve an order directing the discontinuance of taking deposits ? A. There is no such provision in that law ; no language relating to that, but simply an order requiring them to discontinue unsafe practices or violation of the law in which they were engaged.

Q. I assume that you did not understand it, for you answered me that you did not regard the taking of deposits as an illegal act, but you might regard it as unjustifiable ? A. It was improper practices ; there is nothing in any act by which I can prevent their taking deposits, only to recommend the Attorney-General to close them up, but when the injunction is served they are prohibited.

Q. You are not it seems by law, confined to reporting a bank to the Attorney-General to cases of insolvency ? A. No, sir ; as I said before, there is no language in the law looking that way.

Q. Suppose you find the bank that, upon the face of its report and

upon the examination of any of your examiners, shows a surplus, is there any thing in the law prohibiting your passing it over to the Attorney-General? A. No, sir; none whatever, if it is, in my opinion, unsafe to do business or inexpedient.

Q. There might be evidence to you that the managment was improper, inefficient, or something of that kind, that you might determine it was unsafe to pass it over? A. I should undoubtedly, under that provision, report to the Attorney-General, and let the question be settled by the court; there is no doubt about that, I think.

Q. And after it passes out of your hands into the Attorney-General's then it is a question between the Attorney-General and the bank? A. Exactly.

Q. Over which you have no control? A. No, sir; the court might make a decree to close it up, or it might not; I happened to be in court, a short time ago, perhaps two or three months ago, where the case was up in reference to the Atlantic Mutual Life Company, at Albany, where the superintendent had reported to the Attorney-General, and recommended the closing up of the company; the company resisted; they showed a clear deficiency of \$50,000, and Judge Westbrook made an order while I was in court, that if they would make up that deficiency within a certain time, giving them days and weeks, that he would deny the injunction, and they might go on doing business; and, as a matter of fact, they so continued for weeks and months, and the other day a receiver was appointed, and they did not do it; and he exercised the same discretion that I understand the Bank Department does in relation to the savings banks.

Q. There is nothing in the statute or in the action of the department prohibiting you from requiring the trustees of a bank to make good any deficiency, is there? A. No, sir; there is nothing requiring them to do it; nothing preventing their doing it, and it becomes, as I understand it, a mere matter of judgment whether they will close it up or let it go on; my practice has been, where they are willing to do it, to let them do it, if there was reasonable ground for success.

Q. Such was the action of your predecessor? A. It so appears by his report, and it is in proof, on record.

Q. Mr. Ellis, what amount of appropriation has the Legislature made for paying the expenses of the Bank Department for the last year? A. I think it is \$17,000; I am not positive; when I went into the department the Comptroller cut it down \$3,000; I think it was cut down from \$15,000 to \$12,000, but under the law of 1875 the \$5,000 for examinations was put in the supply bill, and this year it was put where it belongs, put it at \$17,000.

Q. That does not include the superintendent's salary? A. No,

sir ; I have not looked at the figures for this year, but I think it was \$17,000.

Re-cross-examination of *De Witt C. Ellis* :

By Mr. TRACY :

Q. Will you mention some kind of thing which you think will be illegal, and give you a right to attack one of these banks ? A. I think if an officer would misappropriate money, if they were engaged in making illegal investments, if they were violating the spirit or the letter of the charter, or in case they failed to make a report.

Q. In case they had a sham deposit account in checks and cash, when there was no money received by them, would you regard that as an illegal act ? A. I would regard that as an improper act.

Q. Would it be an illegal act ? A. Undoubtedly.

Q. On the 19th of July, 1876, you got a letter from your examiner saying that, "In January, 1874, the secretary of the Abingdon Square Savings Bank, in order to make a better show, entered a bogus deposit of \$10,000, and counted it as so much cash on hand ; when I discovered it, a short time afterwards, I remonstrated, and he promised not to do it again ; the same thing was done last January ; the attorney, Edgar F. Brown, put in a check for \$5,000," etc., etc. ; were such practices as these illegal ? A. It was on that report showing such practices, that we closed the bank up.

Q. Do you regard these as illegal practices ? A. I should say they were ; I do not know of any thing that would permit an officer to put in his check for that amount.

Q. Was it upon these facts that you closed up the bank ? A. Yes, sir ; those and some others.

Q. Do you say that ? A. That and from the report ; I refer to the facts contained in all those reports.

Q. This letter of the nineteenth was handed to you and you read it and left it on Mr. Lamb's table, and did nothing about it ? A. I should say so ; I am not clear about that ; I cannot give you the details ; it was on that report and that letter that the department acted ; I think that is one of the banks ; I remember, now, where Mr. Lamb made the application, in my absence, to the Attorney-General.

Q. Is not this the fact, that you left that thing on Mr. Lamb's table without a comment, and not many days afterward left town, and never did a thing about it yourself ? A. I have no recollection about any such fact as that ; I do not think I should be likely to.

Q. Did you leave town shortly afterward ? A. I was out of town some that month.



Q. Out of town on the twenty-ninth of July ? A. My impression is, I went away for my summer vacation somewhere from the twenty-fifth to the twenty-eighth of July ; prior to that I was in Rochester a week or so.

Q. From the nineteenth until the time you went away, you did nothing about this ? A. I can't say, positively, what I did about it ; all that I remember is what appears by the records themselves, in regard to it.

Q. That is, that you got the letter of the nineteenth of July, and never did any thing ? A. I may not have got the letter at all ; I may have been away ; it appears to be filed on that day.

Q. Is that kind of fraud a thing that you think should be acted on at once, or for a man to go off on a vacation and leave it for a deputy to take care of ? A. That is a matter of opinion ; action was taken on that subject by the department.

Q. Was it taken by you ? A. I cannot say now that it was or was not.

Q. Was it taken by you personally ? A. I say that I do not remember the circumstance.

Q. Don't you recollect you went out of town without taking action upon it ? A. I have already stated I do not remember the fact whether I saw the letter before I went away or after I came back ; as soon as I saw the letter, I remembered it.

Q. Are you able to swear now whether or not you did any thing yourself, after the nineteenth of July ? A. I have already stated I do not recollect the circumstance, sufficiently clearly to say whether I did in person or not.

Q. I would like an answer to the question ; are you able to say now, whether or no you did any thing about it, with certainty ? A. I can give you my recollections and impressions.

Q. You cannot say whether you did or not positively ? A. I cannot.

Q. Have you any recollection, that you did any thing about it ? A. I have a recollection of seeing the letter and of knowing the fact.

Q. That the letter was there ? A. Knowing the contents of it ; the exact date I say, I cannot remember whether it was before I went away or after I came back.

Q. Have you any recollection at all, that you did any thing or gave any direction about it ? A. I do not recall the circumstance distinctly, I have my impressions about it.

Q. If you have an impression, I would like to have that as to what you did about it ? A. My impression is, if I saw the letter before I went away that I handed it to Mr. Lamb, and told him to look into the matter, that I was going away or something of that kind ; that

will be the natural course taken, but I cannot swear positively on that point.

Q. Can you swear positively of saying that to Mr. Lamb? A. No, sir.

Q. Did it require looking into at all after reading it? A. Yes, sir.

Q. Was there any question in your mind about what ought to be done when you had that matter before you? A. The question would be what that had done, whether they had violated the law or give them a chance to recuperate or not.

Q. Whether there was a deficiency of assets, or guilty of fraud? A. That could be stopped by making an order.

Q. Did you make that order? A. As I understand the check business, it is added nominally to the amount of the assets and liabilities.

Q. Did you make any order upon that, such as you mention? A. We closed them up; we did not need to make an order.

Q. Who closed them up? A. The department.

Q. Mr. Lamb? A. Mr. Lamb represents me.

Q. You made no order instantly on getting hold of that letter to stop them? A. No, sir; we made an application to the Attorney-General.

Q. Who did? A. The department.

Q. I am asking if you made an order to them to desist from these illegal practices? A. We did not; we did the other thing which the law permitted.

Q. Who did? A. The department.

Q. Who do you mean when you say you did it? A. Mr. Lamb and myself.

Q. Do you mean that you were a party to that communication of Mr. Lamb's? A. I mean that he is the deputy of the Bank Department.

Q. Do you not know that his power is just as perfect as yours, when you are gone? A. I so regard it.

Q. When you are away, he can do it without asking you at all? A. Yes, sir.

Q. But when you are there he can do nothing? A. He can, if I consent to it; he does it every day.

By Mr. TRACY:

Q. As I understand the testimony given yesterday, you stated that you refused to receive the bond from the trustees of the Germania Savings Bank of Morrisania — is that so; as I understand the testimony given yesterday, you stated that you refused to receive the

personal security, the bonds or notes, of the trustees of the Germania Savings Bank of Morrisania when it appeared to be in an insolvent condition; why did you thus refuse? A. Because I did not think it best to take any more of that class of securities, making up these deficiencies.

Q. Were there any already in that institution? A. No, sir.

Q. Why did you take and recognise, in the case of the Third Avenue Savings Bank \$115,000 of such securities, that is, the personal security of the trustees, as assets; why refuse in one case and take them in the other? A. There was just this difference, in the Third Avenue Savings Bank the bonds were taken and in the office before my occupancy of the office; they were part of the assets when I went there; and in the other case the deficiency occurred during my administration and refused to take the bonds.

Q. Still you recognized that \$115,000 as assets? A. I did.

Q. And allowed them as such? A. Yes.

Q. Although taken by the former superintendent? A. Yes, sir.

Q. Do you know \$15,000 of those personal guarantees of the Third Avenue Savings Bank were taken during your administration? A. They were subscribed for, as I understand it, and agreed to be put in; they did not come to the Bank Department ever.

Q. They were taken? A. They were in the bank and counted as assets.

Q. They appeared as assets in the report? A. Yes, sir.

Q. Your reason of the refusal of that class of assets in connection with the Germania Bank is that you did not consider them very good security? A. After the taking of those bonds by my predecessor, and the passage of the law of 1875, the banks were very much restricted in their loans, with a view to making the investments and loans safer than they had been heretofore, and I did not think those personal bonds, although there was no law against making up a deficiency; it seemed a contribution by the trustees to protect the depositors.

Q. Did it ever enter your mind that these bonds were illegal, and therefore could not be enforced; was that question raised during your administration? A. I do not know as it was specially; my own conviction was, and is now, that the bonds are collectible, that there was a sufficient consideration; they have been, in fact, collected, and so decided by the courts.

Q. Some of them? A. Yes, sir; some of the series.

Q. I observe the item of "accrued interest" in a number of these reports and examinations; were any pains taken to inquire whether the accrued interest was running, living interest; I see an item of

accrued interest of \$30,000 or \$40,000; were those items of accrued interest analyzed by the department, or taken for granted, as represented? A. I think, in some cases, the bank reports all the bank interest.

Q. The "accrued interest" relates to all the bank interest on the securities? A. No.

Q. On the report? A. Not necessarily; the banks vary in that respect.

Q. You do not know whether, in the examinations made by the department, there was an analysis of that? A. In what particular case?

Q. In any case? A. Oh, yes; there would be in some cases, probably; I think, as a matter of fact, it is true; I can mention the cases.

Q. You stated that, in March, 1875, there was an indisposition to close the Third Avenue Saving Bank, by reason of an apprehension in your mind that it might be disastrous to other institutions of a kindred character; that was a probable idea; there was no fact you based that upon; if so, what were the facts? A. The facts that influenced me were these, that there were a good many small banks in the city of New York that would be regarded among the weaker class, and if a general excitement was gotten up and deposits withdrawn, it would compel them to go into liquidation.

Q. That is a general winding up? A. Yes, sir.

Q. That is in March, 1875, when this deficiency of \$219,000 appeared; what was there in March, 1875, to create special apprehension; was there any panic then, that you remember? A. No, sir.

Q. Duncan, Sherman & Co., failed in July? A. Yes, sir.

Q. Therefore, there were no special circumstances to create apprehensions of winding up in March? A. Not so much in March as in May.

Q. What was there in May? A. A considerable disturbance; a good many failures of moneyed men in New York.

Q. More so than failures running along down to the present? A. Yes, sir.

Q. The general panic was in the fall of 1873? A. Yes, sir.

Q. Therefore your idea was not founded on fact, but on an apprehension, a theory in your mind; did you consider it a part of your official duty to refrain from winding up the Third Avenue Savings Bank? A. No answer.

Senator COLE—The witness did not answer the question, and I would like to have an answer.

The PRESIDENT—The witness will answer.

Mr. McGUIRE—Mr President, I think the witness was pretty fully examined by the counsel for the State.

Question repeated. A. I have answered pretty fully, in this way, that it was not.

Q. Do you know of a case that had occurred during the administration of your office where the winding up of a savings bank has created these general disasters that you apprehended? A. The winding up of the Third Avenue Savings Bank was followed in a month or two by five or six more along the avenue, way up.

Q. They were very weak, all insolvent? A. No, sir; not as appeared at that time.

Q. Had you wound up any other bank before September, 1875? A. No, sir; I had not.

Q. You had not? A. No, sir; no savings bank.

By Senator McCARTHY:

Q. Have you ever made a rule or order that the deputy and all the clerks in the department should report to you all knowledge of importance as to the condition of the savings banks coming to them through reports or otherwise? A. No special rule has ever been made.

Q. No rule or order? A. It would naturally come to me, any thing I do not know of my own knowledge; I do not think there ever was such a rule established specially.

Q. There seems to be a point raised here as to how far the law compels or authorizes you to interfere with insolvent institutions which are receiving new deposits; I wish to ask you this question; do you recognize it as a part of your duty to take notice of an insolvent bank continuing to receive deposits? A. I do, as a matter of fact; yes, sir, certainly; it is a very important element of duty, too.

By Senator STARBUCK:

Q. I learn from your examination by the people's counsel that you recognized the Abingdon Savings Bank as being guilty of practices rendering its continuance in business unsafe; that you stated, I believe, among these other nine or ten or eleven banks, more or less, was there any other one in which you recognized that same fact? A. I do not recall any that, during my administration, violated its charter among these banks.

Q. That was not my question, you will see; did you, as to any of the other banks besides the Abingdon Square Savings Bank, deem that they were guilty, in any respect, of practices rendering it unsafe to depositors for them to continue in business? A. I cannot say that

I did ; I do not recall any case now where they did acts that they were not permitted to do by law.

Q. Would not you so regard it in any case where the bank itself made its report showing a large deficiency of assets over liabilities ?

A. I do not know that I understand your question.

Q. In cases where the bank, by its own showing, admits that its assets are largely less than its liabilities, do you regard that a safe bank to continue business ? A. Not as safe as one that had an excess.

Q. Do you think it would be a safe bank to invite the deposits of laboring people ? A. I have stated, not to that extent of a bank that had a surplus.

Q. I want a direct answer ; do you think, from your experience as Superintendent of the Bank Department, that it is the due administration or the duties of your office to permit such a bank to continue in business and to receive deposits ? A. I should say in answer to that, only temporarily, unless the deficiency was made up.

Q. Do you think it would be safe for it to be permitted to receive temporarily ? A. That would depend upon the surrounding circumstances, and the condition under which this occurred ; it might be safer than it would be to close it up.

Q. Were you familiar with the provisions of the statute which provided that whenever it should come to the knowledge of the superintendent that a bank was conducting business unsafely, or guilty of a violation of law or its charter, it should be the duty of the superintendent to issue an order commanding the discontinuance of those practices ? A. I am familiar with them.

Q. I desire to inquire of you, in all these banks is there any one of them in which you ever issued such an order ? A. No, sir ; I have already stated I did not know of any other that was committing unsafe practices or illegal practices.

Q. Right there—

Mr. McGUIRE [interrupting]—The witness has a right to explain. Senator STARBUCK—Certainly.

Q. Why didn't you learn the contents of the report of January, 1875, in the case of the Third Avenue Savings Bank, prior to March, 1875 ? A. I can explain that as I understand it.

Q. You do not understand what the question is ; why did you not learn the contents of that report ? A. I was about to say why.

Q. I want an answer ? A. These reports come in as of the first of January, come in from the fifteenth of January to the middle or early part of February ; they go to the clerk for examination and tabulation, preparatory to publication of the annual report, and they

would not naturally get around to my hands until the clerks had examined them, which would be along about that time.

Q. They would naturally be delayed sixty days? A. They would, unless there was some special point raised and brought to my knowledge; we did not get them until about the first of February.

Q. I observe, on page 544, you testified concerning the January report of the Third Avenue Savings Bank in these words, "There is no doubt but what that is a false report; 'I never saw it until I got Reid's examination; then we compared them and found that was a cooked up report ;'" that is your present testimony, I suppose? A. That is my recollection of it now.

Q. For sixty days or more, prior to that examination by Mr. Reid of the report made by him to you, that is your and Mr. Reid's comparison? A. Mr. Reid did not make any comparison, he was not there.

Q. I take it from your testimony; that means the clerks? A. Yes, sir.

Q. For all that time you and your clerks in the office had had all the means in your hands, if you had used them, to ascertain the fact of the falsity of this report, and that it was a cooked up report? A. We did not, sir.

Q. Couldn't you have ascertained that fact by examination? A. The report was not there during that time.

Q. Couldn't you have scrutinized and examined the January report? A. I say the January report was not received for thirty days, probably; I can tell by looking at the file of it.

Q. For thirty days after the first of January? A. Yes, sir; we did not, as a matter of fact, get all these reports in and completed, until February; some time the middle of February; the law gives them till the first of February now.

Q. Duncan, Sherman & Co. failed in July? A. Yes, sir.

Q. Was it the twenty-seventh of July? A. No, sir; I think not.

Q. About what time? A. About that time; I think the twenty-eighth; I am not certain.

Q. Previous to the failure of Duncan, Sherman & Co., had you consulted with anybody, and if so, with whom, as to the safety and propriety of permitting the Third Avenue Savings Bank to continue business? A. I think not with reference to that special point; my consultations were in reference to the other banks that would be affected by the closing of this; I made no special attempt to save the Third Avenue Savings Bank, because I had but little faith.

Q. I understood you, on direct-examination, to say that the time of your consultation as to the financial effect upon other banks, occurred

about the time of the failure of Duncan, Sherman & Co. ? A. It was the day after the failure, I think ; a day or two after.

Q. Previous to the failure of Duncan, Sherman & Co., did you talk with anybody, and if so, with whom ? A. In regard to that particular bank ?

Q. In regard to the effect on other monetary institutions, the closing of the Third Avenue Savings Bank would have ? A. I do not know as I did specially ; in consulting with them in regard to saving these others, that came in as a question, I have no doubt, because it was predicated upon that.

Q. If there is anybody with whom you consulted, prior to the failure of Duncan, Sherman & Co., we want his name ? A. I have already stated, I did consult in regard to these other banks, with quite a number of bank men in New York.

Q. You said to me just now that that consultation began the next day after the failure of Duncan, Sherman & Co. ? A. Consulted about what ? I do not get the point of your question.

Q. About the effect to be produced upon other financial institutions, and finances generally, by the closing of the Third Avenue Savings Bank ? A. I do not think it came in that form at all.

Q. You do not think there was any consultation at all in that form ? A. Not in that form ; the consultation was in reference to merging these smaller banks ; whether we talked over about the Third Avenue Savings Bank especially, I do not remember, but my action was predicated upon the theory that, when that bank was closed, it would carry with it these others.

Q. I desire to know what reason you rendered for inaction in the case of the Third Avenue Savings Bank, from the time that the Legislature adjourned (which was in May), up to the time of the failure of Duncan, Sherman & Co. ; what is the reason you render for non-action for some two months or more ? A. I have already stated two or three times this morning, and I will repeat it, that I was making an effort to save these smaller banks under the provisions of that law, the general law of 1875 ; that action was predicated on a supposition that when that bank was closed, it would carry the others with it more or less.

By Senator BRADLEY :

Q. I desire to inquire what you did with a view to a merger of these smaller banks ? A. Two or three times—my recollection is, three times—at the close of the Legislature, I went a day or two after the Legislature adjourned to New York and consulted with the officers of small and large banks, as to the practicability of merging these



small banks, having the larger banks take their assets and liabilities, and winding them up ; I found a diversity of opinion ; many of the smaller banks were willing, and some anxious to do it, would be glad to do it ; they apprehended disaster, perhaps some of them, and it turned out they did ; some of the larger banks treated the thing as having no practical force ; some of them were friendly to the propositions, and in a general consultation as to whether any thing could be done, and if so what, whether any of them would take the smaller banks, and close them out or merge them in theirs.

Q. There was nothing done to accomplish any such thing as that ?

A. It resulted in nothing, and I doubt whether it ever will.

By Senator ST. JOHN :

Q. I would like to ask you, Mr. Ellis, whether you found any large solvent banks, they were willing to take these banks and to pay the liabilities, whether any such bank was found ? A. I do not know as we got to that point, I found some bankers who were willing to do that, where they had a reasonable show, thought it would be in the interest of the other banks.

Q. That all depended upon the examination to be made ; you had no idea the Bowery Savings Bank, would take the Germania Savings Bank, taking their assets and paying their liabilities, without ascertaining whether they were *bona fide* assets ? A. No, sir.

Q. You would not expect the good banks to take the insolvent banks ? A. I think they would have been justified in doing it, that it would have been a good thing.

Q. Did they ever do a thing of that kind ? A. They have.

Senator PRINCE—If a strong bank, able to hold the securities through these depressed times, had taken the securities of one of these weak banks until better times came, those securities would have been sufficient to pay all the deposits, would they not ? A. In some cases.

Q. And therefore the depositors of that institution would have been saved from the loss of the bank's going into the hands of a receiver ?

A. Yes, sir.

The Senate hereupon took a recess until 4 o'clock, P. M.

## SARATOGA SPRINGS.

The Senate reconvened at 4 P. M.

Examination of *De Witt C. Ellis* continued :

By Senator PRINCE :

Q. Mr. President, I was about to ask the witness, when we took a recess, a question, to free my own mind in regard to a point that I thought I understood, and as the Senator from the Seventh thinks I misapprehend what he said, I will ask the witness as follows: I desire to ask, in connection with the Third Avenue Savings Bank, whether my own understanding is correct; I understood your testimony, Mr. Ellis, in regard to the Third Avenue Savings Bank, that the delay from March until the signing of the savings bank act of 1875, took place because you were waiting until you saw in what form that act should be passed, and that you thought that something might be done under the merger part of that act; from then until some time, perhaps in July, efforts were being made, under that merger clause, to save some of the smaller and weaker banks, and that your going to New York on the day of, or succeeding, the failure of Duncan, Sherman & Co., was in reference to the merger matter, and the calling upon the gentlemen was in connection with what you ascertained in the city of the state of public feeling then, and that the further delay until the time it was closed was on account of what was said to you then by these men; is that correct? A. That is substantially as I stated it.

Q. That was the bill that had been in the Legislature, known as the "Schuyler bill?" A. Yes, sir; the general savings bank act.

Q. If times had grown better, by which I mean, if securities and real estate had appreciated to their values before the panic, either in the fall of 1874 or in the spring of 1875, what effect, in your judgment, would that have had upon these weak banks? A. I think a great many of them would have been saved; perhaps not all.

Q. Do you know of private individuals of fair business ability and reputation, who lost money during the continuance of this depreciation of securities in 1874, contrary to what they had supposed might take place as to the reaction? A. Yes, sir; I think so; that is a pretty well-settled fact; the community is full of them.

Q. I will ask one more question covering real estate; do you know of private persons of fair business ability and reputation, who lost money through the continuance of the depression in the price of real estate in the year 1874, contrary to their expectation that it

would appreciate to some thing of its value? A. I think so; I have heard of a good many.

By Senator ST. JOHN:

Q. I will ask you one question, Mr. Ellis; you say during 1873 and 1874, real estate depreciated; is it not a fact that the reports made by the Third Avenue Savings Bank, during those years, showed a large increase in the value of their real estate? A. My recollection is they do not, except in one instance.

Q. In one instance, how much? A. I cannot give you the figures; there was some change in the value; I do not know what it was.

Q. That Tarrytown property of ninety-two acres, valued at, under the item of other assets they had \$30,000, as the value of that property above cost? A. You mean above \$138,000; I do not think there is any such item; I do not remember any such.

By Mr. CHAPMAN:

Q. It did not come to you at all? A. Not until Mr. Reid's report in 1875.

Q. Is it not also a fact that after putting in their assets of stock at cost, such as they were at the cost price, they had under that same head over \$55,000? A. In the report of 1875, in the January report of 1875, one that I designated as having been cooked up.

Q. That is the one? A. That is the one; that is the report that came to us about the time we got the examiner's report.

Q. Was there not an increase of over \$30,000 in the value of the real estate, from January, 1873, to January, 1874, as shown by their own reports? A. I think not, sir.

Q. I think there was? A. That is a difference of opinion; the reports will show; we went over that pretty thoroughly before the committee.

By Mr. CHAPMAN:

Q. All that evidence, and all that relates to it, appears in the printed testimony before the committee? A. It does.

Q. Went through each item, taking the reports one after the other? A. And I think that demonstrates the fact they did not raise the value of the property.

Q. The Senator from the Tenth [Senator St. John] was a member of that committee? Q. Yes, sir.

Q. Didn't it appear in that examination, in regard to some of the property, it was increased by the payments upon mortgages that were upon the property.

Mr. TRACY—Mr. President, I suggest if the counsel desires to show us what is in that testimony, he had better refer us to it and not ask the witness; we went pretty thoroughly into that question at the time, I remember.

Mr. CHAPMAN—I would not have alluded to it at all if the Senator from the Tenth had not gone over it, and as I think he was permitted to go over it, it would not be very inappropriate for us to call attention to it, and as the Senator asked me to refer to the evidence in the printed case, I will do so, commencing on page 517, following along down through. Each item of the real estate is taken up.

By Senator KENNADAY:

Q. Mr. Ellis, did I understand you correctly yesterday in your testimony that you denied having had an interview with Mr. Smith in regard to the statement he had made up in 1873? A. I did; I said that I never saw that statement; I do not say we never had any conversation in regard to that bank; I think in the early part of the year we did, but these papers that he produced here are what I said I never saw before, to my knowledge.

Q. I find this statement made here on page 77 of the printed testimony; I find Mr. Tracy makes these remarks: "Mr. President I have arrived at a point that I desire to examine this man about these statements, in which he went through the examination of the things and developed the real condition of the bank and laid them before the superintendent, showing the bank was in a very bad condition." On page 102 of the printed testimony I find these questions and answers:

Mr. TRACY—I desired to put the papers in evidence, but I wanted it understood what they were; I would like to put these papers in evidence in connection with some testimony I shall offer.

Q. When this paper was prepared, what did you do with it? A. I showed it to Mr. Ellis, in his private office.

Q. Did he look at it? A. Yes, sir.

Q. Was there a conversation between yourself and him about it at the time? A. Yes, sir.

Q. Go on and state it? A. It was mostly by way of explanation; explaining the matter in which the statement was made up and the object; to get at the approximate condition of the bank at that time.

Q. Do you mean you made explanations to him of how you had done this work? A. Yes, sir.

Q. And how you had arrived at the result? A. Yes, sir; and the pencil mark there I read to him."

Q. Now, Mr. Ellis, I want to know whether you recollect any such

conversation, or whether you stated distinctly and positively that no such conversation took place? A. I say positively and distinctly, that I have no recollection of ever hearing or seeing these papers until I saw them in Saratoga; I think if they had ever been shown me, I should have remembered such a paper.

Q. And on that statement, he showed a deficiency as I remember, of some \$111,000? A. There are three papers, three tabulations have been shown me; there separate papers each one showing different deficiencies made up in different ways, one of \$70,000.

Q. The one referred to in [this examination to which I have called your attention, is the one on which this pencil memoranda purports to have been made, on page 104 of the printed testimony.

Note—That in pencil mark was as follows: “The item \$608,033.63 exceeds the value of the same property as stated January 1, 1873 \$32,752.75; add difference between surplus, January 1, 1873, and July 1, 1873, as shown by reports of the bank, \$8,448.37, and there appears to have been a real loss during the six months ending July 1, 1873, of \$41,201.12. To this sum add depreciation of stocks September, 1873, \$70,250, and the total loss appears to be \$111,451.12.” That is the statement to which I refer; I understand you to say that you never saw that statement? A. I never saw any thing of the kind; to my best recollection; I never heard of it.

By Senator ST. JOHN:

Q. The statement of 1876, I referred to? A. Eighteen hundred and seventy-five.

Q. The 1st January, 1875? A. Yes, sir.

Q. That is correct? A. Yes, sir.

Q. Not 1876? A. No, sir.

Q. The report to which I refer is the report of January 1, 1875?

By Mr. CHAPMAN:

Q. That January report of 1875 it appears in this testimony taken before the committee, was not received, and did not come to your attention until Mr. Reid's report of the examination, in March of that year; is that so? A. Yes, sir.

Q. Mr. Reid's report showed a deficiency of some \$219,000? A. Yes, sir.

Q. That was the deficiency upon which the bank was reported to the Attorney-General, ultimately? A. That was the examination of that report by which we characterized the January report as a cooked up report.

Q. And it appears in the evidence that you recognize it as such? A. We did.

Q. You resolved, at the time you had seen Mr. Reid's report in March, to pass the company over to the hands of the Attorney-General, and the only question in your mind was, when was the proper time to do so? A. That was the exact state of the case; we paid no attention to the January report after we compared them.

By Senator ST. JOHN :

Q. I ask you whether you ever paid any attention, whatever, to the report made by the Third Avenue Savings Bank, as of the 1st of January, 1874? A. Yes, sir.

Q. I find in that, under the same head of assets of every description, not included under the above heads, and after valuing the real state at \$579,651, and valuing the stocks at cost, \$397,361, I find this addition to their assets: "Interest accrued, \$40,124; furniture and fixtures, \$15,000; estimated value of stocks over cost, \$55,986;" do you think the stocks were worth the premium on that amount? A. I cannot tell you.

Q. You had schedules? A. That was three years ago; I do not remember about all these things; the report was examined at the time; I have no recollection about the figures.

Q. The schedules showed what they were? A. We had the regular schedule attached to the report, as in all other cases, I suppose.

By Mr. McGUIRE :

Q. Mr. Ellis, to follow out the question of Senator Kenneday, Mr Smith states that he came into your private office and showed these papers to you, and explained to you the manner in which he had made up this statement fully and at length; now, is that so? A. I said that I do not recollect ever having a conversation connected with any paper except the official papers of the office; these purported to be private papers made in September of that year.

Q. Your answer before was merely confined to seeing the papers, but he goes and states the conversation, explaining it to you; if any such thing had occurred of his coming into your private office with such papers, making explanations to you, would you be very likely to remember it? A. I think I should; it is a statement that a man would be very likely to remember the first term of his office, the first part of his term.

By Senator BIXBY :

Q. You say you consulted with Mr. Sisco and several other financial magnates in New York in regard to the matter; did you consult

with any other parties interested in the bank ? A. I did not know any of the depositors.

Q. In March, 1875, did you think the Third Avenue Savings Bank was insolvent ? A. I think it had a deficiency of what was reported there.

Q. Did you believe it was a safe depository for people to put their money in, and to get it back again ? A. It was just as safe for those that had their money in there as outside depositors who might go in ; they would be taking chances, of course, of that deficiency.

Q. Did you regard it as a safe place to deposit money ? A. No, sir ; not independent of any other consideration.

Q. In March, 1875 ? A. Yes, sir.

Q. The bank was closed in September ? A. Yes, sir.

Q. The reason you did not close it was because you thought it would affect other savings banks injuriously ? A. That was it.

Q. That was in March, 1875 ? A. Yes, sir.

Q. Would it not affect them in the same way in September ? A. The conditions did not exist at that time ; I did not say in March ; I have all ready explained ; I endeavored to save the smaller banks before closing that up ; I think when the bank was closed the effect was much better than if closed in July ; at the time the bank was closed the people were somewhat indifferent to failures ; it did not create any such excitement.

By Mr. McGUIRE :

Q. Have you examined the records of the Bank Department for some years past ; answer that generally, and then I will ask you a specific question ? A. I have read through the reports, more or less, from the day of its organization ; I have examined the official printed reports from the date of its organization down.

Q. Prior to 1851, when the banking associations of this State issued bills, how were those bills secured in the department, circulating notes of banks ? A. By bonds and mortgages and stocks.

Q. Can you call to mind, when Senator St. John was Superintendent of the Bank Department, of one of these banks being closed up, the mortgages foreclosed and not realizing twenty cents on a dollar ? A. You will find that in substance in his own report.

By Senator ST. JOHN :

Q. In what report ? A. The first Bank Superintendent.

Q. Now, in reading that, you did not attribute any culpable negligence to the Senator for that misfortune to the bill holders of that bank,

did you? A. Not at all; I suppose he did his duty, as I do now; I suppose he was deceived, just as we all are, in taking some mortgages.

By Senator ST. JOHN :

Q. Do you say a bank was closed up during my administration of the Bank Department that did not pay twenty cents on a dollar?

A. I did not say that; I said in your report, in substance—I cannot give the language—you speak of certain mortgages having been taken to secure circulating notes which, when foreclosed and collected did not pay but twenty cents on the dollar or something to that effect.

Senator ST. JOHN—I wish to say for the information of the Senate that I do not think I ever foreclosed a mortgage during my whole term of six years in the Bank Department.

Mr. MCGUIRE—Nobody states you did.

The WITNESS—I said, when foreclosed in winding up the bank, I did not say the department did it.

Senator ST. JOHN—Am I on trial here?

Mr. MCGUIRE—No, sir.

By Mr. TRACY :

Q. What was the practice, Mr. Ellis, of the department under your administration as to supervising or examining reports; when special examinations have been made under similar circumstances, what was the practice or rule of your department as to verifying or re-examining the reports of Mr. Reid on the special examinations made by him of other examinations under certain circumstances of suspicion? A. They were all examined as they came to the office.

Q. Were they verified? A. To a certain extent; some portions we could not verify very well in the office.

Q. If the returns showed bonds and mortgages, was their validity or character verified? A. We did not verify those.

Q. Therefore you took his report? A. Yes, sir; as conclusive in that matter.

Q. And acted upon it without further inquiry? A. Yes, sir.

Q. Is that the usual practice? A. Yes, sir.

Q. How long has Mr. Reid been connected with your department under your administration? A. He was an examiner when I went there in 1873.

Q. Were there any special circumstances that made his opinion as it were a finality, and his action the conclusive action without further verification? A. Nothing, except that he was an expert and had a good deal of experience in those matters.



Q. Expert in what? A. In examining these institutions.

Q. Did you inquire or find out at any time whether the Third Avenue Savings Bank trustees, or the trustees of any other savings bank, gave guaranty bonds as they are called, ever paid the interest on those bonds? A. The report shows they did.

Q. Did any other but the trustees of the Third Avenue Savings Bank for one year; I see a return of \$9,000 interest, paid on those bonds; did they not stop paying them? A. They did the last year or two.

Q. Did any others pay? A. They did in the People's Savings Bank; the bonds Mr. Howell took.

Q. How long before they closed up in the matter? A. I cannot give you the exact figures; I think the last year they did not pay.

Q. It is stated here when the affairs of the Germania Savings Bank of Morrisania were under investigation, Mr. Reid stated that, I think, by the special examination of 1875, it was shown that they were in an insolvent condition, and fully \$70,000 behindhand; they were not wound up for a year afterwards, as I remember, and when the report was made in 1875, in January, at the special examination I think it was, he states that some money was paid up and other money was pocketed by the trustees; I want to ask you whether the department ever ascertained from the time of that special examination of Mr. Reid's until the time of the closing of the bank that that money was ever paid up; do you remember about that? A. They subscribed the amount first; some paid in money, some in bonds and mortgages, and one in steamboat bonds; that was completed before they made the January report under the new law of 1876; that was sworn to.

Q. Was there any examination between the time of the examination showing their insolvency and the time of their report, or what was stated in their report, taken as true, or was there an examination of those securities that were given to supply the deficiency? A. The attorney of the bank, Mr. Hall, wrote a letter to the department, stating they had done so and so, and it so appeared in the report; that report was sworn to by the committee under the new law, who made the examination of the affairs of the bank in which the officers swore to the report, so that we had the affidavit of the five trustees of the bank as to the truthfulness of that report, showing that, by its terms, they had put in the bonds and mortgages, and made up that deficiency.

Q. Then there was nothing to be shown of the character, value nature of liens or other circumstances, in connection with those securities other than the statement of the officials connected with the bank? A. Mr. Hall was not a trustee of the bank; he was an attorney of the bank.

By Senator WOODIN :

Q. Mr. Ellis, I want to ask you one or two questions, and I will try to not be tedious about it ; suppose a savings bank should make an investment of the funds of depositors in securities not authorized by law, what steps, if any, can the Bank Superintendent take to correct error? A. He can issue an order, under his hand and seal, under the law of 1871 and the law of 1875.

Q. To do what? A. Forbidding—

Q. [Interrupting.] No, but it is already done? A. The only thing he can do is to require them to take them out and put in legal securities or turn them over to the Attorney-General.

Q. That he can do? A. Yes, sir.

Q. And it would be a question for the court to pass upon, whether it should be wound up, after having violated its charter? A Yes, sir.

Q. Suppose that is required of a bank and they fail to do it, what is the step, proceeded in court? A. Yes, sir.

Q. And the court makes an order? A. Yes, sir.

Q. Directing what may be done? Yes, sir.

Q. The Attorney-General proceeds in court, and the court makes an order directing what shall be done upon the evidence?

Mr. McGUIRE—Yes; yes, sir.

Q. Now, then, there was a certain law, if I remember the testimony right, referred to in the printed book here, that related to savings banks in the city of New York, which forbade those banks investing in a certain class of stocks that was not selling at par in market; was there not? A. Yes, sir.

Q. That was a law relating to all the savings banks in the city of New York? A. Yes, sir.

Q. Is it not a fact that many of the savings banks, and some of those that are mentioned in the charges of the Governor, did invest, prior to your coming into the department, in that class of stocks?

A. A great many of them had.

Q. And in stocks selling at less than par in market? A. I cannot say that of my own knowledge.

Q. No; because you were not there, but the reports of the banks themselves show that fact, don't they? A. They show they held certain southern securities, bought by the bank at less than par; whether they got these securities while they held them as collateral to loans, or whether they were taken as investments direct, I have no knowledge.

Q. They would not go into the assets, if they were held as collaterals? A. No; but they might have acquired title.

Q. This was a habit of these banks investing in this class of securities ; does it not appear here from the report ; take for instance the first bank, the Mechanics and Traders' Bank ; does it not appear in their reports from year to year, that they had invested in southern securities, North Carolina, Alabama and Tennessee bonds ? A. It appears they held those stocks ; yes, sir.

Q. Wasn't it within your power when you came into the department under the law, to take proceedings to compel them to sell those securities ? A. I did not so regard it

Q. Why not ? A. Because I had no knowledge of how they acquired title ; whether they took them under the possession of that law, at par or less, or whether they acquired title on loans.

Q. Did you ever inquire how they acquired title ? A. I do not know as I ever did, except, when we came to examine, the question came up.

Q. When the first report came in, after you came into the department, you found they had on hand Tennessee, South Carolina, North Carolina and Alabama bonds, and a large amount, and the cost price at considerable less than par, wasn't it a proper subject of inquiry for you whether they had invested in those bonds, or whether they had acquired the title in some other legitimate way ? A. I treated it in this way ; investments having been made before my time, I assumed the superintendent then acting had settled the question of fact, whether they were taken at less than par, how they were taken, whether by investment or loan.

Q. Then you did not feel that it was your duty, finding *prima facie* the law violated, to inquire into the mode and manner how ? A. I did not know whether the law was violated.

Q. Wasn't it your duty to inquire ? A. Possibly so.

Q. To inquire how they had come in possession of a large class of securities, worth considerable less than par in the market, which was forbidden by statute ? A. If I had known the fact they had acquired them by direct investment—

Q. [Interrupting.] You found these bonds so far as this bank was concerned, in the report made in July, 1873, did you not, and July, 1874, and in January, 1875 ? A. They were held all the while pretty much.

Q. In your examination before the committee I understand you to make answer like this, speaking of the purchase of these bonds :

“By Mr. CHAPMAN :

Q. All these purchases (speaking of bonds) having been made under a prior Superintendent of the Department, and having been passed by the department in their report, and your attention not having been

called to the question whether they had been illegally invested or not, you had a right to assume they had legally invested in them ;” now then, I will read your answer : “A. I thought so ; I supposed the question of fact on which the whole thing depends, as I was advised by the Attorney-General, that is, whether they were worth par, whether the cash value was equal to par, was a question of fact which I had a right to assume ; the law provides they may purchase, and certainly they may hold those stocks ; if they have a right to purchase, they have a right to hold as an investment ;” I understand you to say that your position was then, and is now, finding those securities on hand, that you assumed that the law had been complied with, and not violated, although, upon the face of the report, it appears they were purchased at less than market value ? A. That is the position I took, undoubtedly ; I remember the question coming up in regard to that bank.

Q. Do you regard that as entirely safe to assume ? A. Some things have to be assumed that you have no personal knowledge of.

Q. You might have had personal knowledge, might you not ? A. I might, perhaps, by having made an investigation in regard to the particular fact.

Q. And when you found those securities on hand, under circumstances—I do not assume that they excited suspicion—but under circumstances calculated to excite suspicion, you could have sent an examiner to the bank ? A. Oh, yes.

Q. And he could have ascertained all about it ? A. Yes, sir.

Q. And have made his report to you ? A. Yes, sir.

Q. And, in that way, you would have ascertained the exact truth, because you could have sworn the officer; but that was not done ? A. The examiner reported those securities in his reports likewise.

Q. Did he report the fact to you that they had been investing, purchased by the bank as an investment ? A. I think not ; no sir.

Q. Simply reported the fact that they held the securities ? A. Yes, sir.

Q. If he had been put upon that line of inquiry, he could have ascertained all about them ? A. He could have, undoubtedly.

Q. But, instead of making the inquiry, you assumed it was a proper purchase, and that the stocks were purchased at par, is that it ? A. No, sir ; I did not assume any thing that did not appear in the report.

Q. Let us see whether I understand you right ; “the question of fact, it is a question of fact, and that question of fact was whether the stock was purchased at par upon which the whole thing depended, as I was advised by the Attorney-General, that is, whether they were worth par is a question of fact I had a right to assume, because they

have been acted upon by the department?" A. In that particular case I remember this questioning the officers, at the time we made that special examination; they claimed that the question of fact had been settled, because the stocks had been sold at par; that was their claim, the price established in New York, the stock had been sold at par, a certain line of stocks there; that same bank had made a large sale in England, and established a market price at the par value; that was the claim of the bank officers.

Q. Was that a reasonable claim in view of the fact—A. [Interrupting.] Then they claimed further that they bought them as cheap as they could.

Q. Was that a reasonable claim, Mr. Ellis, when it appears by their report they purchased the par value of \$168,000 Tennessee bonds for \$104,000? A. I should not say it was, but we differ.

Q. And of the South Carolina bonds, \$155,000, par value, for \$90,000? A. I think that related to the Alabama 8's.

Q. Of Alabama bonds, \$166,000 for \$157,000? A. I think that was the list of stocks they spoke of.

Q. Their reports would seem to impeach any such claim as that, wouldn't they? A. Yes, sir; they did not claim they paid par for the Alabama's but they had been sold for that, and that they made a good bargain some way or other; I do not know how they made it.

Q. You found this same class of securities held by the various banks, mentioned in the charges of the Governor, when you came into office? A. A few of them.

Q. No inquiry has been instituted, so far, by the department, to ascertain whether the law had been violated, in that respect, in investing in those bonds? A. I do not call to mind any particular case.

Q. Yet, is it not a fact that several of those banks—take, for instance, the Third Avenue Savings Bank—had invested in these bonds at considerably less than their par value? A. That is probably so; that question all came up before the court in that application for a receiver; the court passed upon it.

Q. If the application had been made direct to the court to compel them to sell bonds they had no right to buy, in the first instance, the court would have granted it, would it not? A. Perhaps so; they refused, however, to appoint a receiver.

Q. I think there is some evidence in the printed volume (I tried to find it and could not to-day), on the same subject; what was the standing of the Third Avenue Savings Bank in the financial circles, in the year 1875, in the city of New York? A. I never, in New York, heard but a little about it.

Q. I am told that Mr. Sisco testified on that subject? A. The attack on that bank in 1872, when the big run was on it, gave it a good

deal of advertising and a good deal of notoriety, and it was a bank pretty well in the minds of the public at that time ; at a later date, I think, it died out some so that any attention was not called to it in New York particularly.

By Senator VEDDER :

Q. Suppose that you had found a bank under your superintendency had purchased these bonds contrary to law, what could you have done about it ?

Senator WOODIN — He has answered that question.

Senator VEDDER — Put it in the hands of the Attorney-General ?

Mr. CHAPMAN — I do not understand that he could have done that under the law.

Senator WOODIN — Done what ?

Mr. CHAPMAN — Reported it to the Attorney-General to apply to the court.

Senator WOODIN — Mr. President, perhaps I ought to give the witness a chance to make himself understood, I will refer to the law of 1875, and call his attention to it. I will ask the witness a question, which I asked when I first got up ; suppose a savings bank in this State should invest in securities not authorized by law, what steps can the Superintendent of the Bank Department take to make that correct, or to correct the error ; did not I understand you to say that he could invoke the powers of the Attorney-General ? A. Under the statute, he would first be required to make an order under his hand and seal to discontinue those illegal practices.

Q. Is that all ? A. He might recommend the Attorney-General to wind them up.

Q. For what ? A. Violation of charter — of the law.

Q. Is that the general power mentioned in the statute ? A. No, sir.

Q. Will the witness refer me to the section of the law of 1875, where that can be done by the Attorney-General ; I have it here ; let me read a part of this section : “ Whenever it shall appear to the said superintendent, from any examination made by him, or from the report of any examiner made to him or from the report made by any such corporation, pursuant to the requirements of this act ; that any such corporation has committed any violation of its charter or of law, or is conducting its business or affairs in an unsafe or unauthorized manner, he shall by an order under his hand and seal direct the discontinuance of such illegal and unauthorized, or unsafe or unauthorized practices,” etc., etc. ; is that the end of his power ? A. I think not, I think under the subsequent clause to that, as to their doing business in an unsafe manner.

Q. “ And whenever any such corporation shall refuse or neglect to

make any such report," etc.; under that power may he not ask the court to make an order compelling them to sell those securities? A. Undoubtedly.

Q. And that without winding up the bank? A. That covers the whole case.

Q. Whether it is in the province of the Bank Superintendent, finding such practice to have been engaged in by a bank, to include in his order an injunction against the bank from receiving deposits until the disposition of the matter has been submitted to the Attorney-General?

A. I think not; I do not think he has any power of that kind, authorizing such specification in the law; he can report the fact to the Attorney-General, and then the Attorney-General is clothed with power to exercise his own judgment.

By Senator VEDDER :

Q. I asked you a question some time ago, and that was this: what was to be done in the event you found a time under your predecessor, or your predecessor's predecessor, that stocks were taken contrary to law? The answer to that question is that you make an order forbidding the countenance of such practices, or turn the matter over to the Attorney-General; now, the court you say, might make an order, and you might report to the Attorney-General to make an order to sell these bonds; what good would that do; suppose he had Alabama bonds with seventy cents on the dollar, what good does it do to the bank when they are sold; they are worth no more sold than when held? A. That is a pretty hard question to answer; it would depend as to the future market value; if they appreciated, the bank would be better for holding them; if they depreciated, they would be worse off.

Q. I am trying to find out what is the duty of the superintendent when he finds these facts, whether he ought to seek to sell all these bonds, and if so, what good will it do to sell them; how much better will that make the bank; then you say that would depend upon circumstances, perhaps? A. As to how it would affect the bank in dollars and cents, would all depend upon the market subsequent to that time.

Q. The stocks would be worth just as much held by the banks if they continued to hold them, unless some one knew what the future course of the price of the stocks would be? A. Yes, sir.

Q. Then it would do no good to sell them; suppose a bank was entirely solvent, that it had a surplus for instance of \$500,000 more than its liabilities; ought that bank to be wound up because they happen to have some stocks there illegally purchased? A. That would be a question of fact for the court to determine, I suppose.

Q. You would not consider that a proper case for winding up and having a receiver appointed? A. No, sir; I do not understand that the law contemplates that.

Q. If I understand your power about issuing an order, it is not to correct irregularities that have been made, illegal practices that have been already accomplished, but it is to prevent the continuance of them.

Senator WOODIN—You cannot get an order issued until after it is done? A. The effect of the order would be to require them to discontinue any further practice of that kind; that would be the effect of the order, that is, that they should not do it again so far as an order goes.

Q. Then I understand if you had known all these facts about these illegal practices or purchases of bonds contrary to law, that even then you had a discretion to act in the light of all the surrounding circumstances of the bank, whether it was best to wind it up or not; best to report it to the Attorney-General, or let it go on notwithstanding that; that each case was to be judged by the circumstances of the case, irrespective of any inexorable rule of law? A. So far as the winding of them up, making an application directly for a receiver, probably I would; but, so far as asking an order for discontinuance, that would be another case.

Q. The order of discontinuance could not be invoked, where the bonds were purchased five or six years ago under your predecessor; you could not issue an order of that kind, when a thing had been done and they were not doing it now? A. That is a question I assumed, that had been disposed of and settled.

Q. For instance, a bank some five years ago, purchased some bonds below par and contrary to law, and having done it five or six years ago, would you consider that would have been a proper thing to issue an order to discontinue, when it was done five years ago—simply one act? A. It never has been done.

By Mr. CHAPMAN:

Q. The law in relation to the order was not passed until 1871, was it? A. No, sir.

By Senator PRINCE:

Q. Mr. Reid was an examiner under your predecessor? A. Yes, sir.

Q. You found him there and continued him there. A. Yes, sir.

By Mr. TRACY:

Q. Are you correct in the remark you made a short time ago that



all these southern State bonds which were purchased below par were purchased before you came into office? A. Do you speak of any one bank or of any bank?

Q. A Tennessee bond, for example? A. I think in one instance; I think I recollect one case where they exchanged some bonds for another class of bonds.

Q. Do you recollect the fact on the 24th of March, 1875, in Mr. Reid's letter to you, he speaks of the Third Avenue Savings Bank in these words: "The trustees have sold \$150,000 Kansas at par, but have not shown much financial capacity in their recent purchase of \$5,000 Tennessee bonds at fifty-one;" this was in March, 1875.

Mr. CHAPMAN—That is the report on which the bank was closed up.

Q. You also recollect the fact that when this bank was examined under your orders, in 1873, by Reid, Aldrich and Vroman, that they found no Tennessee bonds in the bank at all? A. I recall it only by looking at the report.

Q. Page 3 of the documents? A. He states in his March report they had sold those and bought these; this is the first time I knew it; this March report of 1875.

Q. You saw the fact there? A. Yes, sir.

Q. You will see there are no Tennessee's in there?

By Senator WOODIN:

Q. That was your first knowledge of it when the report was made? A. Yes, sir.

Q. Had they never appeared in any annual report until after that examination?

Mr. TRACY—We do not know how that is.

Mr. CHAPMAN—That letter says it was a "recent purchase."

Mr. TRACY—It was a recent purchase.

Mr. McGUIRE—Purchased after the first of January; the clerk of the received testified to that as of the first of January.

Mr. TRACY—I want the fact in by the witness that there was a recent purchase.

The WITNESS—It was.

By Mr. McGUIRE:

Q. It appears in the evidence; the fact appeared to the department by Reid's report? A. On the 24th of January, 1875, the Kansas bonds were sold.

By Senator PRINCE:

Q. The first you knew of that purchase was in March, 1875? A. Yes, sir.

Q. The bank was closed on that report? A. It was closed up.

By Senator SCHOONMAKER:

Q. Do I understand you to say that you had made an order in the case of any of the banks, directing any of them to discontinue unsafe or unauthorized practices, in respect to the character of the securities held? A. I think no order of that kind was ever made under hand and seal since I have been in the department; I do not know, of my own knowledge, of any illegal purchases of securities, except those that appear in the final report when we closed them up; take this case, for instance—

By Mr. CHAPMAN:

Q. Closed it up without issuing an order? A. In all those cases where they appear, I think we have closed up the bank without making an order.

By Senator SCHOONMAKER:

Q. Did I understand you to say that you regarded the bonds of the southern States, held by some of these banks, as safe securities? A. I said, in reply to the Senator from the Thirty-second, if it will be any benefit to the bank, if they were required to be sold; I stated that it might be in dollars and cents; and it might be all depending upon the market subsequent to that date; if they appreciated, it would be a gain; if they depreciated, it would be a loss.

Q. As a matter of fact, did you regard the bonds of southern States as safe securities? A. When they got to a point that they did not pay interest, we would not regard them as safe as those that did.

Q. Were there some such bonds as that? A. There were some in some cases where some of the States had defaulted the interest, but not at the time of the purchase, but they subsequently had.

Q. Do you recollect how much the banks held of those railroad bonds? A. I do not think any of them, except as they bought them on sales as collaterals for loans, under the charter clause; I do not know of any bank that ever made any investments in railroad bonds.

Q. It does not appear that any of the banks invested in any railroad bonds? A. No, sir; I do not know of any; in one or two

cases they had to buy in these bonds on the failure of borrowers of money, where they had been put up as collateral, and the bonds sold and bid in by the banks themselves, the same as a piece of real estate.

Q. Do I understand you to say that you construed these statutes to give you power to make an order to discontinued its illegal practices?

A. I did not state that; the language of the law is, if I recollect it, where a bank is doing this kind of business.

Q. Under this clause of the charter, "Whenever it shall appear, etc., that any corporation has committed any of the acts specified;" do you understand that relates to past transactions as well as to contemplated? A. I understand that it relates to the past entirely, where it is committed.

Q. A word in regard to the construction of this statute; its language is, "Whenever it shall appear," etc.; did you construe that to be a kind of discretionary power to the superintendent of being a direct demand to him to proceed at once? A. I understood it to be a discretionary power "when it shall appear to him."

Q. Did you advise with counsel as to the construction of this statute? A. I talked with the Attorney-General about the provisions of the law; I never heard it questioned before this examination.

Q. Did the Attorney-General advise you that that was a discretionary power under this language which I have read? A. I do not know; I do not recollect that he ever did in terms, but in talking the matter with him we talked about the discretion the superintendent must exercise.

By Senator VEDDER:

Q. Do I understand, Mr. Ellis, that none of these practices of making improper illegal investments, were done by any of these banks under your administration, except this one? A. Not that I know of; I do not recall any now.

Q. Immediately upon being known, the bank was closed? A. It was on that report that showed that state of things we finally acted; the dates will show.

Q. None of these orders discontinuing were ever made by you? A. No, sir; I do not recollect of any.

Q. That was from the fact, was it, that these practices were had under your predecessor? A. These facts appear in the report of the department before I came there, the fact of the owning of these securities.

Q. And that you did not shoot off these orders, when there was nothing to fire at; that is, you considered the thing had been already accomplished under a former administration? A. I accepted the conclusion of my predecessor on the questions of fact as conclusive.

Q. Do you think if you had learned the fact, that they had been taken under your predecessor, that the issuing of the order spoken of would have done any good at all ? A. It might not ; I cannot say.

Q. It would not affect what had been done ? A. No ; if the stocks had depreciated, it would not have been to any advantage if the order had been issued.

By Senator WAGSTAFF :

Q. Did you not suppose that deposits were made in the Third Avenue Savings Bank, on the assumption that it was insolvent ? A. Very likely ; the depositors believed the bank was solvent when they put money in there.

Q. Did they not suppose it was solvent when they put money in there ? A. That would be the natural result.

By Senator ST. JOHN :

Q. I think, Mr. Ellis, you stated there were a large number of savings banks in the State that held these southern bonds, bonds of southern States as securities ; am I correct ? A. Yes, sir.

Q. A large number of them ? A. Quite a large number.

Q. Is there any bank outside of the cities of New York and Brooklyn thus situated ? A. Yes, sir.

Q. Is it not a special law making it applicable to the cities of Brooklyn and New York, to hold these bonds under any circumstances ? A. No, sir, it is not ; some of the charters throughout the State give them the right to purchase bonds of any southern State, prior to the general savings bank law of 1875 ; other charters gave the power to purchase certain bonds of certain southern States ; other charters gave no permission to buy southern bonds.

Q. Wasn't there a special law passed a few years ago allowing banks in the cities of New York and Brooklyn to invest in stocks of southern States where their stock was above par in the market, and sold out above par ? A. That was a general law applicable to those two cities, but there were charters in those cities prior to that law that did permit certain banks to invest in certain southern securities.

Q. Is the Mechanics and Traders' Bank one of them under their charter ? A. I do not know ; I do not remember now whether I ever examined that question or not.

Q. From their reports you know they had these securities ? A. They are reported to have been purchased, and at a certain cost.

Q. You suppose that to be correct ? A. I assume it to be.

Mr. McGUIRE—I will call the attention of the Senator from the Tenth to this fact ; I see in the Newburgh Savings Bank in the report of 1872 "Ohio State bonds, \$5,500."

Senator ST. JOHN—That is all right.

Mr. McGUIRE—So there is a bank outside the city of New York.

Senator ST. JOHN—And that is one of the stocks which by the charter of the bank it was allowed to take.

By Mr. McGUIRE :

Q. You were asked by Senator Schoonmaker if you knew of any savings bank that held any railroad bonds ; I will call the attention of the Senate to the report of the Bank Department to the Legislature of 1874 : "The Ulster County Savings Institution, \$64,400 ; amount loaned on stocks, as follows : Delaware and Hudson Canal Company, Union Coal Company stock, and Overlook Mountain, Rondout and Oswego Railroad Company, New York, Kingston and Syracuse Railroad Company," amounting to \$64,000 ; now these reports were made from time to time by the department to the Legislature showing all these facts ? A. Every year ; yes, sir.

Q. And the members of the Legislature and members of the Senate have been in possession of the information for years of the nature of the securities held by these savings banks, have they not ? A. I suppose they have ; they have had the reports sent them regularly.

Q. So the facts of the kind of securities held by these savings banks were not concealed by the department but furnished to the Legislature as required by law ? A. Yes, sir ; in all cases.

Q. I want to call your attention, Mr. Ellis, to this law that you have been examined on ; your attention was called to portions of the law of 1875 and it was read to you ; let me read that part of it, the law of 1871 : "And whenever it shall appear to the superintendent, from any examination made pursuant to the provisions of this section, that any savings bank or institution for savings has been guilty of a violation of its charter or of law, or is conducting business in an illegal or unsafe manner, he shall, by an order under his hand and seal of office, addressed to the institution so offending, direct discontinuance of such illegal or unsafe practices, and for a refusal of the bank to comply with such order the superintendent shall communicate that fact to the Attorney-General ;" that is all the provision of law ?

Mr. TRACY—There is a little more there.

Mr. McGUIRE—There is a good deal more ; but I am speaking of this order when the bank has been guilty of a violation of its charter or of law ; then you may make an order, it seems, directed to the bank to discontinue such illegal practices, and if they refuse then you communicate the fact to the Attorney-General. What I want to get at is — what I wish to call your attention to specifically, Mr. Ellis, is — but I will read the whole of it.

Mr. TRACY — There are a few lines more of it to give effect to it.

Mr. MCGUIRE — The violations of law and unsafe practices I intend to separate ; that is all there is in that law or of this. Where is there any provision in that statute authorizing you or the Attorney-General or the court to direct the bank to sell any bonds that they may hold in contravention to law ; of course your construction of the law is not probably very important, but I want to see what your idea of the law is.

The WITNESS — That is the law of 1871 ?

Mr. MCGUIRE — Yes, sir ; in that respect it was not much different from the law of 1875 ? A. There is no such provision, as I remember ; I have not the law before me.

Q. However improper this examination may seem to be, I am asking you this in view of some of the questions they did not ask you ; is there any thing in this law giving the superintendent any power other than to direct a discontinuance of the illegal or unsafe practices ?

A. Not as I recollect it under the law of 1871.

Q. Suppose the illegal practices had been perpetrated years before, was it in your power to correct them under that law ? A. I do not know as there is under this law of 1871.

Q. Suppose the illegal practices spoken of in this act of 1871 had been committed years before, and the bank had ceased illegal practices where is your power to correct or remedy the illegal practices so committed years anterior to that time ?

Senator WOODIN — May I ask the counsel a question ?

Mr. MCGUIRE — Certainly.

Senator WOODIN — The law under which these New York savings banks existed, forbade them purchasing a certain class of securities ?

Mr. MCGUIRE — Yes, sir.

Senator WOODIN — To purchase them at less than par, if they were selling in the market at less than par, it was a violation of their charter to purchase them ?

Mr. MCGUIRE — Yes, sir.

Senator WOODIN — Is it not true there is a general provision of law which authorizes the winding up of any bank, or savings bank, or any other corporation, for a violation of its charter ?

Mr. MCGUIRE — Certainly there is.

Senator WOODIN — Isn't the Bank Superintendent the person to set them in motion ?

Mr. MCGUIRE — No, sir ; the Attorney-General himself, under the provisions of the statute, can institute proceeding, where the corporation is acting in violation of its charter, without any action of the superintendent ; but the Senator probably misapprehended my point ; suppose the illegal practices had been perpetrated years before, where

is the authority in this statute given to the superintendent that he might correct them? All that he can do is to issue his order directing a discontinuance of such illegal practices, and if the illegal practices are discontinued, good; but if not discontinued, then he reports the fact to the Attorney-General.

Senator WOODIN—What is a continuance of an illegal practice; does it require a repetition of them or a holding of securities that are forbidden to be purchased?

Mr. MCGUIRE—Where they are constantly acting in violation of law; the continuance of the thing is an illegal practice.

Senator WOODIN—Refers to the practice?

Mr. MCGUIRE—Yes, sir.

Mr. TRACY—You do not acknowledge it is illegal for them to hold those stocks?

Mr. MCGUIRE—They bought them in violation of law.

Mr. TRACY—Were they not violating the law every day they kept them?

Mr. MCGUIRE—They were not guilty of illegal practices; they may have been holding them in violation of their charter, but it was not an illegal practice.

Q. One other question, Mr. Ellis; whenever any questions arise in the Bank Department, as to the construction of statutes or your duty under a statute, whose advice, as a State officer, did you seek? A. Whenever I had any doubt as to the meaning of a statute or any part of it, I always took the Attorney-General's opinion.

Q. You did not go outside to consult private counsel, but you took the legal adviser of the State? A. Yes, sir; for construction.

Q. And whatever opinion he did give you as to your powers and duties, did you act upon that in the construction of the statute? A. Always, except in one case, where the Attorney-General gave one opinion and his deputy gave an adverse opinion.

Q. You took the deputy's? A. In that case I did not take either, because I did not have occasion to act.

Q. Was that the present or former Attorney-General? A. It was the present Attorney-General when he was deputy.

Q. He gave an opinion against Attorney-General Pratt? A. That was in regard to the District of Columbia bonds, I think; an illegal right to invest in them.

By Senator BRADLEY:

Q. Was there any examination made of the Third Avenue Savings Bank, after the examination of April, 1873, and March, 1875? A. No, sir.

Q. Those are regular examinations under the law? A. Yes, sir.

Q. Mr. Reid attached to his report of April, 1873, a statement in regard to these southern bonds, referring to the troubles in Louisiana, and that a heavy loss to the bank might result from that; was there any time when there was an improvement in those securities, subsequent to that examination of April, 1873? A. I cannot tell you of my own knowledge; I cannot carry all the facts in connection with all these institutions for three or four years in my head; I have got to rely upon the record to a great extent; I might have known it at the time; I might have known certain facts, but could not recall them now after four years time; there are a great many things in connection with these institutions that a man cannot carry in his head; he can keep the general idea and facts.

Q. Do you recollect whether the report made by the bank to the department in January, 1874, showed any improvement? A. I do not remember the figures; no, sir.

Q. Do you recollect the general fact whether it showed any improvement or not in the condition of the bank? I find no report of 1874 in the book.

Mr. OLMSTEAD—On page 17 of the printed testimony.

The WITNESS—It should be there, I think; it was introduced.

Q. I find a letter somewhere in the book, in which you state that it is the rule of the department to close up a bank, where there is a deficiency of assets, unless the deficiency is made up at once; do you now understand that to be the rule of that department? A. I do not think the word "rule" is used; you refer to the letter sent off December 25, 1875, to several banks in the vicinity of New York, in which I think the language used was: "The policy, or settled policy of the department to do so, and so under certain conditions."

Q. Settled *policy* or settled *rule*? A. Policy; that is the substance of it.

Q. Do you understand that to be the fact that that is the settled policy of the department? A. Where a bank is deficient, and the trustees did not see fit to make good the deficiency, if it was large enough; if the bank had elements of success, otherwise than that but beyond that, it was the policy to close them up.

Q. That was so expressed in the law? A. That was so expressed in the law.

Senator BRADLEY—I will make this inquiry, having in view the statement of the witness made yesterday, that the practice was to exercise the judgment and the discretion of the superintendent in performing the duties of the department in this respect, whether that is inconsistent with the statement of this matter? A. No, I do not think it is; I think it is in perfect harmony with it.



Q. Unless the deficit is made up at once ? A. I spoke of those banks, and such banks as these ; that might not apply to some other banks, perhaps, that had a small deficiency.

By Mr. CHAPMAN :

Q. This was written in December following the time you had closed up the Third Avenue Savings Bank ? A. Closed up five or six.

Q. You took the position that they had to make up the deficiency or you would close them up ? A. I took the position then with the belief that out of forty-five banks in the city of New York on the 1st of January, 1875, at least twenty—fifteen or twenty—would have to finally be closed ; some thirteen or fourteen ; it is doubtful whether some of these small banks can proceed yet ; the truth is, there were too many banks ; an unhealthful competition.

Q. The department was calling upon the Legislature, from year to year, to dispense with creating these additional banks ? A. The annual reports will show a constant petition to the Legislature against incorporating these savings banks in the city of New York.

Q. Is it not true, also, that the department was calling upon the Legislature to pass some legislation by which the rate of interest to be paid to depositors should be reduced from six per cent to five per cent ? A. I made such a recommendation in my first report ; I think the first.

Q. Didn't Gov. Dix also call the attention of the Legislature to that ? A. He did, in his first message.

Q. I ask you whether, if this interest had been reduced, so that the banks were not required to pay but five per cent instead of six per cent, whether, in your opinion, they would not, almost every one of them, have succeeded in getting through ? A. I think a good many of them might have ; perhaps not all.

By Mr. TRACY :

Q. After the passage of the act of 1874 it was in your power to license a new bank ? A. Eighteen hundred and seventy-five.

Q. It came into your power to sanction the organization, and were some created under that ? A. I think two banks had been permitted to commence business.

Q. Three ? A. Two, I think ; possibly three ; I am not positive.

Q. There could not be any by special charter under the new constitution ? A. There was one passed by the Legislature and signed by the Governor in 1875.

Q. Was this it ? A. I am not positive ; I think not ; I think that

one was in New York ; either this had a charter the year prior or else it was granted by me.

Q. Is that a very small concern ? A. It must be.

Q. The assets being \$5,500 ? A. They had not done business ; just opened.

Q. Been going on a year and a half and payed a little profit on the little money it had ; I will take another one ; the Long Island City Savings Bank, incorporated in 1875, corner of Jackson avenue and Third street, Long Island City ; do you recollect the creation of that ? A. I am not positive whether that bank was created by a special charter.

Q. Do you call that one a small bank ? A. My recollection is they had the charter the year before and commenced business in 1875.

Q. Thirteen thousand three hundred and ninety-eight dollars and fifteen cents was the whole valuation of its means ? A. Yes, sir ; from the report of 1877 ; surplus, \$237.51.

Senator PRINCE—It is one of the best places in the State for a bank and one of the best banks in the State ; that is a place where it ought to have been long ago.

The WITNESS—I spoke particularly of the large cities.

Q. *Roslin Savings Bank*, incorporated in 1875, and commenced business in April, 1876 ; do you recollect that ? A. I do not think that was created by the department ; I am not positive ; I only recall two.

Q. It has a small surplus, perfectly sound ? A. Surplus, \$27.52.

Q. Did you think it against the policy of the State to have these small banks created ? A. It depends on the localities where it is created and if there is a reasonable field for one.

Q. There was in Brooklyn, room for one ? A. Not in this part, I guess ; I guess you will find in all these cases, the surplus made up by the trustees, though, and the expenses of the bank paid by them.

Q. Those three were all that were organized under the law of 1875 ? A. I think there was one upon the Hudson river, in one of the river counties.

Q. The learned counsel on the other side, in reading from the law of 1871, read down to a certain point ; I ask your attention to two or three words following ; “ when the superintendent shall learn that any savings bank, or institution for savings, has been guilty of a violation of its charter or law, or is conducting business in an unsafe manner, he shall, by an order under his hand and seal of office, addressed to the institution so offending, direct discontinuance of such illegal or unsafe practices,” now, I ask your attention to what properly follows,

as the scope of the order, "direct the discontinuance of such illegal or unsafe practices and made to conform to the requirements of its charter, and of law, and the safety and security of its transactions," didn't you understand that to be applicable to that case, that, where a bank violates its charter, if they bought shares in fire insurance company, that you could order them at once, not only to not do it again, but to reform what they had done, and proceed in conformity with the requirements of their charter and law, which requires they should not take any such stock.

MR. TRACY—"Directing a conformity to the requirements of its charter," did you not regard it as an illegal act of the trustees of a savings bank to take deposits after the bank was insolvent? A. There was no express provision of law prohibiting it, that I know of.

Q. You did not regard it as illegal?

MR. CHAPMAN—That has all been gone over.

THE WITNESS—I do not see where it is illegal; that is a question of ethics, more than of law.

The Senate hereupon adjourned to Thursday, August 9, 1877, at 10 A. M.

SARATOGA SPRINGS, *August, 9, 1877*—10 A. M.

The Senate met pursuant to adjournment, a quorum present.

*Henry L. Lamb*, recalled on behalf of the respondent, testified as follows:

Examined by MR. MCGUIRE:

Q. You were here the other day, Mr. Lamb, when Mr. Smith produced some papers, tabulation of the affairs of the Third Avenue Savings Bank? A. Yes, sir; I was.

Q. When did you first see those papers? A. On Monday, I think, the 23 of July; after I was subpoenaed.

Q. When did you first hear about Mr. Smith having such papers, or claiming to have them? A. I cannot tell whether it was after Mr. Reid's examination of March, 1875, or whether it was after the failure of the bank that Mr. Smith stated to me that he had made an exhibit of the report of July, 1873, to Mr. Ellis, showing the insolvency of the bank.

Q. That is the first, then, you ever heard of his claiming to have had such papers was either after the examination of 1875, or after the failure of the bank? A. That is my recollection now; I cannot fix what date it was.

Q. He then did not exhibit to you any papers? A. No, sir; he did not.

Q. Or claim that he had any such papers then in his possession? A. No, sir.

Q. You have seen those papers, since, I suppose? A. I saw them the day they were presented to the Senate.

Q. Presented here in this investigation? A. Yes, sir.

Q. Are these papers any part of the records of the office — of the department? A. They never have so appeared; they were never indorsed until Monday, July 23d, when Mr. Smith brought them to me.

Q. July 23, 1877? A. Yes, sir.

Q. Then they were indorsed as filed of that day? A. The day was not put on that day; it was simply indorsed "Tabulation of the Third Avenue Savings Bank's report of July 1, 1873;" the date of the filing was not put on.

Q. Was there any thing on there indicating the filing of the papers? A. No, sir; they were indorsed on the 23d of July, 1877.

Q. Indorsed "Statement of the Third Avenue Bank—tabulation of the Third Avenue Savings Bank?" A. Yes, sir.

Q. In whose handwriting was that? A. It was in mine.

Q. How did you come to put it on there? A. After I received the subpoena, myself and two clerks, Mr. Smith and Mr. Werner, set about the collection of all papers that the subpoena called for, and I took the several papers one by one; if there was any thing there wanting, I called the clerks to get them, and, while the clerks were bringing papers to me, Mr. Smith brought this one, and I held it in my hand; there was no filing on it at all; I held it in my hand a moment, and he says: "This is so and so;" I, with my pencil, put the memoranda which I have just stated upon the paper.

Q. You had not seen the paper until that time? A. I have no recollection whatever of seeing the paper until that Monday afternoon.

Q. If it had been a public paper on record, it would have been required to have been filed in the office, wouldn't it? A. Yes, sir; it ought to be filed if it were such.

Q. Did you notice where Mr. Smith got the paper when he brought it to you? A. No, sir; I was in the interior room, at the vault, and most of the papers were in the interior room; I cannot tell where he got it.

Cross-examined by Mr. TRACY:

Q. Was it a part of Mr. Smith's regular duties to scrutinize and to

make tabulations in such cases ? A. It is Mr. Smith's duty to examine the reports of all institutions, which are filed in the office, to see if they are correct in form, and to see if they show any irregularity, indicating a bad condition of the institution, and if he finds that, he is to report it either to Mr. Ellis, or to myself.

Q. When Mr. Smith produced to you this paper, which you marked "tabulation," did you say that he said any thing to you about it ? A. He said nothing, except to indicate its contents, which I recorded on the paper ; that is all that transpired between us.

Q. At what place did he thus hand it to you ? A. At the table in the room of the department, where we were collecting and filing all the papers called for.

Q. Did you observe from what point or place he took the papers he handed to you ? A. No, sir ; I could not, because he went for the outer room for this and the other papers, and I cannot see the outer room from the inner room.

Q. When he returned from the outer room with divers papers, this was among them, was it ? A. Yes, sir.

By Senator BRADLEY :

Q. Did you ask him where he obtained the papers at that time ? A. No, sir ; I did not ask him about it ; there was nothing to attract my attention to this paper more than any others.

Mr. TRACY—A multitude of papers to be got there, and some Mr. Smith brought, and some Mr. Werner brought, and many of them had to be refilled, and it was a pretty busy afternoon.

Q. Do you know of any reason why the paper was not marked to be filed ? A. No, sir ; I do not.

Q. Did you make any inquiry ? A. No, sir.

Mr. McGUIRE—I suppose that was answered by Mr. Smith himself, that he kept it in his private drawer.

Mr. TRACY—And Mr. Smith had—

The PRESIDENT—[Interrupting] This belongs to the summing up.

*Edgar A. Werner*, recalled on behalf of the respondent, testified as follows :

Examined by Mr. McGUIRE :

Q. Mr. Werner, when was your attention first called to these papers by Mr. Smith that have been referred to ? A. The tabulation referred to ?

Q. Yes, sir ; the so-called "tabulation of the Third Avenue Bank ?" A. I do not remember of ever having seen it until I assisted him in

this room, comparing it ; I do not remember of having seen it until I saw it in this room.

Q. Or hear of it until it was brought out here ? A. I have no recollection of ever having heard of it.

Q. After the examination of Mr. Smith, did you hear a conversation between him and Mr. Swaney, the clerk in the Attorney-General's office ? A. Yes, sir.

Q. Here the other day ? A. Yes, sir.

Q. State what that was in relation to, what directions he gave for filing at this subpœna ?

Mr. TRACY—Mr. President, I object to that.

Mr. McGUIRE—Mr. President, I ask the witness to state what Mr. Smith said in respect to the directions that he gave as to what should be inserted in the subpœna under which he attended as a witness here.

The PRESIDENT—Did you, Mr. McGuire, call Mr. Smith's attention to it ?

Mr. McGUIRE—Certainly, I did.

Mr. TRACY—And to the fact that he directed about the subpœna ?

Mr. McGUIRE—Yes, sir.

The PRESIDENT—I think the question was asked Mr. Smith.

Mr. TRACY—I withdraw my objection.

Q. State what he said in relation to it ? A. He said that he advised Mr. Taylor to subpœna for reports, examinations, memoranda, etc.

Q. Did he say why he put in the word "memoranda" there ? A. I do not recollect ; I recollect his using the word "memoranda."

Q. Was he and Mr. Swaney at the time talking about these papers ? A. They were talking about the trial here and about papers generally

Q. And in that connection used the word "memoranda" in the subpœna in what he told Mr. Taylor ? A. Yes, sir.

Cross-examined by Mr. TRACY :

Q. Who was this conversation with ? A. Sheldon Swaney, clerk in the Attorney-General's office.

Q. What was Swaney doing at the time ? A. Swaney and myself were conversing when Mr. Smith passed us on the street.

Q. Had Mr. Swaney any knowledge of making out subpœnas for either side here ? A. I do not know.

Q. You say Mr. Smith told him to put so-and-so on the subpœnas ; old you that he told Mr. Taylor to put so-and-so ? A. Yes, sir.

Q. Gave no reason for it ? A. No, sir.

Q. Repeat the articles that he subpœnaed for there ? A. I do not know as I can.

Q. What things did he say to Swaney that he recommended Mr.

Taylor to mention in the subpoena? A. Reports, examinations and memoranda; I remember distinctly that he mentioned memoranda; I think he also spoke of other matters.

Q. Did he speak of letters? A. I think he mentioned other matters but I would not be sure about that.

Q. Are you positive that he said memoranda? A. Yes, sir.

Q. Didn't it strike you as a little singular that he should say "memoranda?" A. No, sir.

Q. Did you receive a subpoena yourself? A. Yes, sir.

Q. Wasn't there in it the *duces tecum* clause that occupied as much as two or three folios, in general terms, describing nearly every description of book, document, paper and memoranda, etc.; was that included in the subpoena? A. No, sir.

Q. Did you see subpoenas given to other persons? A. I saw one or two.

Q. Didn't you see they contained a long description of all manner of documents and papers and memoranda and writings? A. I did not read them; I noticed they enumerated a number of different things; I did not notice what they were.

Q. Did you notice whether the word "memoranda" was in the subpoena or not? A. No, sir; I do not think I read any of the subpoenas; I am quite positive.

Q. Did you see the subpoena which went to Mr. Lamb or Mr. Smith? A. I saw the one that went to Mr. Lamb.

Q. Was that a long paper? A. Yes, sir.

Q. I have here Mr. Lamb's subpoena; look at that and see if you recognize that as one of the subpoenas; it is the same kind of thing? A. Yes, sir.

Q. It goes on to say, that you bring with you and produce as such witness, the following books, papers and documents, namely, all books, examinations, reports, commissions authorizing examinations, copies of reports and examinations, letters, copies of letters, telegrams, copies of telegrams, papers, documents, memoranda, tabulated statements, records, returns of records, returns of records of examination, records of commissions relating in any manner to all the following named banks, etc., etc.; I prepared this and if I had left out "memoranda," I would have passed a poor examination for admission at the bar.

Mr. McGUIRE — I will offer, Mr. President, a complaint in the case of Thomas Flynn against the Third Avenue Savings Bank. The complaint was verified on the 3d of January, 1872, by Mr. Flynn, the plaintiff.

Mr. TRACY — It is a newspaper copy cut from the New York Sun.

Mr. McGUIRE — I will state the contents of it, and the reporter can

take it : This was an action, it seems, commenced by Thomas Flynn, against the Third Avenue Savings Bank, to dissolve the corporation and for the appointment of a receiver upon the following grounds ; the complaint is set out here in full ; Flynn was a depositor of the bank, and I may as well state in this connection, that Mr. Howell, the superintendent, in his report to the Legislature of January 1, 1873, called the attention of the Legislature to this very suit, and its disposition by the court, and its subsequent action under the decision which was made by the court in this case. Without taking up the time of the Senate in reading the paper *in extenso*, I will state its contents : It *first* alleges the incorporation of the bank ; *second*, that it commenced doing business soon after its incorporation, at the corner of Twenty-sixth street and Third avenue in the city of New York ; that from the 6th day of February, 1865, to the 31st of May, 1869, Michael Hart depositeed various sums of money in the bank from time to time, and drew various sums out, until, at the date of this complaint, there was a balance due Hart, of the amount specified, which amount was assigned by Hart to Flynn ; that he had demanded the amount from the bank and the bank refused to pay ; then sets forth the trustees, and then alleges gross mismanagement and abuse on the part of the bank as follows : That, during the six years last past, the policy of the said bank and the management of its affairs have been under the control and direction of three of its said trustees (having, in the prior part of the complaint, set out the whole number, twenty-two); and that these three trustees were Spencer K. Green, William A. Darling and William B. Harrison, who was the counsel to the bank ; that the bank has violated the provisions of the act. I wish to call the attention of the Senate especially to that—that the said bank has violated the provisions of the act of its incorporation and other laws and acts binding upon it in various ways and at various times in manner as follows, to-wit :” *Seventh*. That by loaning the money of said depositors on bond and mortgage on real estate, outside the limits of this State, and likewise by investing said moneys in such speculations and securities as Tennessee bonds, Dry Dock, East Broadway, and Battery Railroad stock, Jersey City and Hoboken bonds, and Hudson County bonds of the State of New Jersey, all of which said loans and investments were contrary to the statute in such case made and provided. *Eighth*. The complaint further says that, during the years 1866, 1867 and 1868, the said Spencer K. Green, at that time trustee and president of the said bank, was also a director in a company known as the Atlantic Mail Steamship Company; that while acting as such President, he caused the moneys of the said bank to be loaned on call loans upon the faith of the said stock of the Atlantic Mail Steamship Company ; that said Atlantic Mail Steamship Company’s



Stock was a purely speculative stock, and *depreciated rapidly and greatly in value* while the said bank had large sums of money loaned upon it as aforesaid ; that by reason of such depreciation the said bank sustained a direct and immediate loss of over \$250,000 ; that the loaning of the said bank's money upon the said Atlantic Mail Steamship Company's stock as collateral, was in direct violation of a law binding upon defendant, and yet was persisted in and carried on by said Green to the extent of loaning an additional million of dollars, even after a resolution of the board of trustees of the said bank had been passed prohibiting any further loans thereon. *Ninth.* Plaintiff further says that William A. Darling, auditor and trustee of the said bank as aforesaid, was also at one and the same time president of a bank known as the Murray Hill Bank ; and another of the trustees of the said savings bank, to wit : Hiram M. Cool, was, at one and the same time, a director in a certain other bank known as the Security Bank ; that during the year 1871 the said Darling and the said Cool, while holding their several positions in the said several banks as aforesaid respectively, caused the said Murray Hill Bank and the Security Bank to be used as depositories for the moneys of the said savings bank ; that in pursuance thereof, the moneys of the said savings bank, in the Murray Hill Bank, and Security Bank during the years 1870 and 1871, all of which was in express violation of section 8 of chapter 257 of the Laws of 1853 *Tenth.* Plaintiff further says that section 8 of the act of 1854, incorporating the defendant, provides that "the trustees of said corporation shall not, directly or indirectly, receive any pay or emolument for their services." Plaintiff says that this provision has been repeatedly and continuously violated by the trustees of the said bank ; that said trustees have secured the appropriation to themselves of large sums of money in the shape of salaries, under the pretense that they were entitled to the same by reason of their being "officers" of the said bank, and have paid and taken to themselves, in payment thereof, the moneys of the depositors, at a time when they knew there was an alarming deficiency in the assets of said bank ; that in order to secure such appropriations, the acting officer had a secret understanding with certain other of the trustees, whereby, in consideration of the votes of the said trustees, the salaries, so voted, were divided up, and a part thereof paid back to such trustees, in payment of pretended services for acting on committees. *Eleventh.* Plaintiff further says, that in order to cover up the losses sustained by the improvident speculations and investments aforesaid the said trustees have made, or caused to be made, false and fictitious entries, upon the books of the said bank, and have prepared and submitted false and erroneous statements to the State Superintendent of the Banking Department

with the intent to deceive the depositors and the said superintendent, as to the true condition of their said bank; that on the first day of January, 1871, a sworn statement or report was sent by them to the said superintendent, wherein it was stated that the said bank had, on that day, assets to the amount of \$6,063,345.97 and liabilities to the amount of \$5,959,369.84, due to the depositors on the same date, leaving a reported surplus of \$103,976.13; plaintiff says, that in making up the said report, the said trustees omitted to charge as a liability the interest due their depositors, on the said 1st day of January, 1871, which said interest amounted to \$153,405.50, and was passed to the credit of the said depositors on said date, and was as much a liability of the said bank as the principal sums due; that by adding the said interest due depositors (\$153,405.50) to the liabilities reported as aforesaid, instead of being a surplus of \$103,976.13, there was in fact a deficit of \$49,429.17 in the assets of the said bank *Twelfth*. Plaintiff further states that the transactions in Atlantic mail stock before mentioned were principally carried on with one A. W. Dimmick, who, at the time of the sudden depreciation in the value of the said stock, was largely indebted to the said bank on loans made to him on the faith of said stock; that said Dimmick was unable to pay his said indebtedness, and in satisfaction thereof conveyed, at the instance and request of said bank, a certain tract of land situated at Tarrytown, in the State of New York, to one William H. Waring, the law partner of W. B. Harrison, trustees as aforesaid; that thereupon the said Waring executed a mortgage upon the said land in favor of the said bank, which, with the mortgages then existing upon the same, amounted to about \$287,000; a sum which exceeded the full value of the said land; that in the annual report made to the Superintendent of the Bank Department and on the books of the said bank, the said mortgages were classed and counted in with other mortgages such as savings banks are allowed by law to hold, thereby giving a false and erroneous impression as to the assets of the said bank. Plaintiff further says that subsequently a portion of the said Tarrytown lands was exchanged by the said bank for three houses on Fifth avenue, near Eighty-fifth street in the city of New York; that the portion of the Tarrytown lands so exchanged consisted of all the improved part thereof, and was taken at a valuation of \$125,000; that the three houses on Fifth avenue were valued in the exchange at \$225,000 or \$75,000 each; that in order to carry out the trade the said bank paid the owners of the houses \$80,000 in cash and discharged a mortgage of \$20,000 on said houses; that the title to the said houses was taken in the name of the said William H. Waring, who still remains the record owner thereof; that said Waring is a person of limited means, and the only security the depositors, whose

money is invested in said houses, have for its return consists in the personal probity and honor of the said Waring. Plaintiff further says that the said houses have remained ever since their acquisition unsold and untenanted (except when occupied, rent free, by one of said trustees), and that the annual loss of interest to said bank, and the payment of insurance and taxes, will exceed \$20,000 ; that the exchange of a part of the Tarrytown land for the said houses was a most injudicious speculation, and in direct violation of section 2 of the law of 1854 incorporating the defendant. *Thirteenth.* Plaintiff further says that section 5 of the law of 1854 incorporating the defendant requires that all vacancies by death, resignation or otherwise shall be filled by the board without unnecessary delay. Plaintiff says that about a year has elapsed since the death and resignation of nine of said trustees, and yet the said bank has taken no steps toward filling the vacancies thus created. *Fourteenth.* Plaintiff further says that some time during the month of April, 1871, the State Superintendent of the Banking Department appointed the Hon. Emerson W. Keyes and Mr. James S. Hennessy commissioners, and authorized them to make an examination of the condition and management of the affairs of the said bank ; that in pursuance of such authority the said commissioners entered upon the performance of their duties."

Mr. McGUIRE—This portion I desire to call the attention of the Senate to: "Fourteenth. Plaintiff further says that some time during the month of April, 1871, the State Superintendent of the Banking Department appointed the Hon. Emerson W. Keyes and Mr. James S. Hennessy commissioners, and authorized them to make an examination of the condition and management of the affairs of the said bank ; that in pursuance of such authority the said commissioners entered upon the performance of their duties ; that a large number of witnesses were examined, among whom were many of the present as well as former trustees of the said bank ; that the evidence taken was very voluminous, and is now, together with the reports of the said commissioners, on file in the office of the said superintendent at Albany. Plaintiff says that all the acts of mismanagement and violations of law hereinbefore alleged are substantiated by the evidence taken before said commissioners, and virtually conceded by each of said commissioners, in their reports to the said superintendent." It goes down to "a run was precipitated," and then describes the run, and that they resorted to various subterfuges, etc., and alleges other irregularities and violations of law on the part of the trustees. It is verified on the 29th of January, 1872, and here is an order of Judge Barrett on that day requiring the bank to show cause why an injunction should not be granted restricting it from exercising any of its corporate powers, rights and privileges or franchises.

Senator SCHOONMAKER—Was that a private action ?

Mr. MCGUIRE—It was an action by a depositor setting forth all the facts alleged here. In connection with that I will simply make a reference, Mr. Senator, to the report of the Superintendent of the Bank Department in the year 1873—the 1st of January, 1873—to the Legislature, his next annual report following, where he calls the attention of the Legislature to the suit.

Senator SCHOONMAKER—Is there any reason alleged in this complaint why the Attorney-General did not bring the action ?

Mr. MCGUIRE—Because, by the statute itself, a depositor can bring the action. A depositor, creditor or Attorney-General, either can bring an action against an insolvent corporation.

Senator COLE—I would like to inquire whether there was a decision in this case.

Mr. MCGUIRE—The report of Mr. Howell shows what the decision was.

Senator WOODIN—Was there a trial ?

Mr. MCGUIRE—Yes, sir ; the motion was made for an injunction and for the appointment of a receiver, and denied.

Senator WOODIN—Was there a trial subsequently ?

Mr. MCGUIRE—No, sir ; that motion was disposed of on its merits.

Senator WOODIN—Will all the papers used in that trial be in evidence before us so that we can see what they are ?

Mr. MCGUIRE—We introduce the complaint and the report of the superintendent to the Legislature.

Senator BRADLEY—Will the report show the opinion of the court ?

Mr. MCGUIRE—No, sir.

Mr. TRACY—Is the gentleman prepared to let us have a copy of the papers upon which the motion for the injunction was opposed ?

Mr. MCGUIRE—They must have been opposed on some papers.

#### “ FLYNN’S COMPLAINT.

New York Supreme Court, city and county of New York. Thomas Flynn, plaintiff, against the Third Avenue Savings Bank, defendant. The complaint of the above-named plaintiff respectfully shows :

First. That the defendant, the Third Avenue Savings Bank, is a corporation duly incorporated under and by virtue of various acts of the Legislature of this State, passed April 17, 1854 ; February 24, 1859 ; April 1, 1865 : April 6, 1866, and April 25, 1867, respectively, and has power to make loans on pledges and deposits, and do any and all other banking business pertaining to a bank for savings, deposit of funds, etc., and is subject to all laws made and provided for the government of similar corporations.

Second. That the said bank began business as a savings bank shortly after its incorporation as aforesaid, and from that time to the present has transacted the general business of a savings bank, with its principal place of business for the last six years at the corner of Twenty-sixth street and Third avenue in the city of New York.

Third. That on and between the 6th day of February, 1865, and 31st day of May, 1869, one Michael Hart deposited various sums of money in the said bank; and from time to time withdrew various sums; that the gross amount of said deposits was \$360, the gross amount of such withdrawals was \$205, leaving a balance due the said Hart from the said bank of \$155; that on the 1st day of January, 1870, the bank-book of the said Hart was left with the said bank to be written up; that it was so written up, and the interest then due added to the said balance, making the amount due said Hart on said 1st day of January, 1870, \$186.02; that the same has never been paid, nor any part thereof; that said Hart has made a number of attempts to withdraw the said balance due him as aforesaid, but has been unable to get admission to said bank, owing to the doors of said bank being closed; that despairing of getting his money the said Hart duly assigned and set over, for a lawful consideration, his said bank-book to Thomas Flynn, the plaintiff herein, and all the right, title and interest of the said Hart in and to the balance of money, with the interest due thereon. Plaintiff says that the said bank is justly indebted to him in the sum of \$186.02, with the interest thereon from the first of January, 1870; that he has attempted to gain access to the said bank to demand the money so due him, but was unable to do so on account of the large number of persons in said bank, and the crowds gathered about the door.

Fourth. That during the year 1870, the board of trustees who managed the affairs of said bank were Spencer K. Green, William A. Darling, William B. Harrison, James Stephens, James Owens, William D. Bruns, Enoch T. Winter, Andrew Stephens, Daniel Bates, Nathaniel Terpening, John H. Lyon, Hiram M. Cool, James Montieth, B. W. Vanvoorhis, Dr. A. G. Dunn, W. B. Bibbins, Samuel H. Cooper, Charles Roome, W. A. Dooley, John A. Hatt, John Murphy and R. G. Hatfield. That Enoch T. Winter and W. B. Bibbins, two of said trustees, have since died, and seven other of said trustees, to wit: Messrs. Dunn, Cooper, Roome, Dooley, Hatt, Murphy and Hatfield, have, in view of the gross mismanagement and abuses hereinafter mentioned, resigned their positions as trustees in said bank.

Fifth. That during the six years last past the policy of the said bank and the management of its affairs have been under the control and direction of three of its said trustees, to wit: Spencer K. Green

who held the position of president ; William A. Darling, who acted as auditor, and William B. Harrison, who was the counsel to the bank.

Sixth. Plaintiff further says that the said bank has violated the provisions of the acts of its incorporation and other laws and acts binding upon it, in various ways and at various times, in manner following, to wit :

Seventh. By loaning the moneys of its depositors on bond and mortgage on real estate outside the limits of this State, and likewise by investing said moneys in such speculative securities as Tennessee bonds, Dry Dock, East Broadway and Battery railroad stock, Jersey City and Hoboken bonds, and Hudson county bonds of the State of New Jersey, all of which said loans and investments were contrary to the statute in such case made and provided.

Eighth. Plaintiff further says that during the years 1866, 1867 and 1868 the said Spencer K. Green, at that time trustee and president of the said bank, was also a director in a company known as The Atlantic Mail Steamship Company ; that while acting as such president he caused the moneys of the said bank to be loaned on call loans upon the faith of the said stock of the Atlantic Mail Steamship Company ; that said Atlantic Mail Steamship Company's stock was a purely speculative stock, and depreciated rapidly and greatly in value while the said bank had large sums of money loaned upon it as aforesaid ; that by reason of such depreciation the said bank sustained a direct and immediate loss of over \$250,000 ; that the loaning of the said bank's money upon the said Atlantic Mail Steamship Company's stock as collateral was in direct violation of a law binding upon defendant, and yet was persisted in and carried on by said Green to the extent of loaning an additional million of dollars, even after a resolution of the board of trustees of the said bank had been passed prohibiting any further loans thereon.

Ninth. Plaintiff further says that William A. Darling, auditor and trustee of the said bank as aforesaid, was also at one and the same time president of a bank known as the Murray Hill Bank ; and another of the trustees of the said savings bank, to wit : Hiram M. Cool, was at one and the same time a director in a certain other bank known as the Security Bank ; that during the year 1871, the said Darling and the said Cool, while holding their several positions in the said several banks as aforesaid, respectively, caused the said Murray Hill Bank and the Security Bank to be used as depositories for the moneys of the said savings bank ; that in pursuance thereof, the moneys of the said savings bank, in various large sums, were deposited in the said Murray Hill Bank and Security Bank during the years 1870 and 1871, all of which was in express violation of section 8 of chapter 257 of the Laws of 1853.

Tenth. Plaintiff further says that section 8 of the act of 1854, incorporating the defendant, provides that, "The trustees of said corporation shall not directly or indirectly receive any pay or emolument for their services." Plaintiff says that this provision has been repeatedly and continuously violated by the trustees of the said bank; that said trustees have secured the appropriation to themselves of large sums of money in the shape of salaries, under the pretense that they were entitled to the same by reason of their being "officers" of the said bank, and have paid and taken to themselves in payment thereof the moneys of the depositors at a time when they knew there was an alarming deficiency in the assets of said bank; that, in order to secure such appropriations, the acting officers had a secret understanding with certain other of the trustees, whereby, in consideration of the votes of the said trustees, the salaries so voted were divided up, and a part thereof paid back to such trustees in payment of pretended services for acting on committees.

Eleventh. Plaintiff further says, that in order to cover up the losses sustained by the improvident speculations and investments aforesaid, the said trustees have made, or caused to be made, false and fictitious entries upon the books of the said bank, and have prepared and submitted false and erroneous statements to the State Superintendent of the Banking Department, with the intent to deceive the depositors and the said superintendent as to the true condition of their said bank; that on the 1st day of January, 1871, a sworn statement or report was sent by them to the said superintendent, wherein it was stated that the said bank had, on that day, assets to the amount of \$6,063,345.97; and liabilities to the amount of \$5,959,369.84, due to the depositors on the same date, leaving a reported surplus of \$103,976.13; plaintiff says, that in making up the said report the said trustees omitted to charge, as a liability, the interest due their depositors on the said 1st day of January, 1871, which said interest amounted to \$153,405.50, and was passed to the credit of the said depositors on said date, and was as much a liability of the said bank as the principal sums due; that by adding the said interest due depositors (\$153,405.50) to the liabilities reported as aforesaid, instead of being a surplus of \$103,976.13, there was in fact a deficit of \$49,429.17 in the assets of the said bank.

Twelfth. Plaintiff further states, that the transactions in Atlantic Mail stock, before mentioned, were principally carried on with one A. W. Dimmock, who at the time of the sudden depreciation in the value of the said stock, was largely indebted to the said bank on loans made to him on the faith of said stock; that said Dimmock was unable to pay his said indebtedness, and in satisfaction thereof conveyed, at the

instance and request of said bank, a certain tract of land, situated at Tarrytown, in the State of New York, to one William H. Waring, the law partner of W. B. Harrison, trustee, as aforesaid; that thereupon the said Waring executed a mortgage upon the said land in favor of the said bank, which, with the mortgages then existing upon the same, amounted to about \$287,000, a sum which exceeded the full value of the said land; that in the annual report made to the Superintendent of the Bank Department and on the books of the said bank, the said mortgages were classed and counted in with other mortgages, such as savings banks are allowed to hold, thereby giving a false and erroneous impression as to the assets of the said bank. Plaintiff further says that subsequently, a portion of the said Tarrytown lands was exchanged, by the said bank, for three houses on Fifth avenue, near Eighty-fifth street, in the city of New York; that the portion of the Tarrytown lands, so exchanged, consisted of all the improved part thereof and was taken at a valuation of \$125,000; that the three houses on Fifth avenue were valued in the exchange at \$225,000 or \$75,000 each; that in order to carry out the trade the said bank paid the owners of the houses \$80,000 in cash, and discharged a mortgage of \$20,000 on said houses; that the title to the said houses was taken in the name of the said William H. Waring, who still remains the record owner thereof; that said Waring is a person of limited means and the only security the depositors, whose money is invested in said houses, for its return, consists in the personal probity and honor of the said Waring. Plaintiff further says that the said houses have remained, ever since their acquisition, unsold and untenanted (except when occupied, rent free, by one of said trustees), and that the annual loss of interest to said bank and the payment of insurance and taxes will exceed \$20,000; that the exchange of a part of the Tarrytown lands for the said houses was a most injudicious speculation, and in direct violation of section 2 of the Law of 1854, incorporating the defendant.

Thirteenth. Plaintiff further says that section 5 of the Law of 1854, incorporating the defendant, requires that all vacancies by death, resignation or otherwise, shall be filled by the board without unnecessary delay. Plaintiff says that about a year has elapsed since the death and resignation of nine of said trustees, and yet the said bank has taken no steps toward filling the vacancies thus created.

Fourteenth. Plaintiff further says that some time during the month of April, 1871, the State Superintendent of the Banking Department appointed the Hon. Emerson W. Keyes and Mr. James S. Hennessy, commissioners, and authorized them to make an examination of the condition and management of the affairs of the said bank; that in pursuance of such authority, the said commissioners



entered upon the performance of their duties; that a large number of witnesses were examined, among whom were many of the present as well as former trustees of the said bank; that the evidence taken was very voluminous, and is now, together with the reports of the said commissioners, on file in the office of the said superintendent at Albany. Plaintiff says that all the acts of mismanagement and violations of law hereinbefore alleged are substantiated by the evidence taken before said commissioners, and virtually conceded by each of said commissioners in their reports to the said superintendent.

Fifteenth. Plaintiff further says that the said bank is now, and has been for a number of years past, insolvent, and unable to pay its debts; that according to its own sworn report, filed with the superintendent on the 1st of January, 1871, there was a deficiency in its assets of \$49,429.27, as hereinbefore shown; that on the 1st of July, 1871, a deficit of \$287,067.29, was reported to exist by Mr. James S. Hennessy, one of the commissioners aforesaid; that on the said first day of July, 1871, the liabilities of the said bank were \$6,512,283.29, and its assets \$6,225,215.80, and since that day its assets have not increased, nor its liabilities diminished, but on the contrary, its ability to pay its depositors has largely decreased, by reason of the facts next hereinafter mentioned.

Plaintiff further says, that shortly after the said commissioners made their report to the Bank Superintendent as aforesaid, the matters and things therein stated became matters of public notoriety, and so great was the alarm of depositors, that what is commonly called a "run" was precipitated upon said bank; that said run begun on or about the ninth day of October, last past, but abated after a while, only to be renewed with increased force on the second day of January, instant; that since the day last mentioned, the banking-house of the said bank has been constantly besieged with an eager crowd, clamoring for their deposits; that owing to the manner adopted for payments by the said bank, and the systematic delays practiced by its officers, and the tricks and devices resorted to to hinder and delay creditors from getting their money, and the closing of the bank doors during the usual hours, with a notice that no more would be admitted, the said bank has succeeded in thwarting the efforts of depositors to get their money; that by reason of these and divers other subterfuges, the said bank, has succeeded in avoiding the payment of a larger sum than about two and a half millions of dollars, which sum should (had the officers of the bank acted in good faith and with ordinary diligence) have been paid out in six days at the furthest; that many of said depositors are now, and have been for days previous (some of them remaining up all night) at the doors of said bank, hours pre-

vious to the opening and after the close of said bank, making all sorts of endeavors to collect and receive the deposits justly due and owing them.

Plaintiff further says that the said bank, in order to meet the demands of its depositors, has been borrowing large sums of money and pledging its securities to the amount far in excess of the sum borrowed, conditioned for the payment of the same; that by reason of the assistance thus rendered, and the system of "slow payment" adopted, the said bank has been enabled to avoid a total suspension of payments.

Seventeenth. Plaintiff further says, upon information and belief, that the liabilities of the said bank are at the present moment at least \$3,000,000, and its assets will not net or bring over \$2,000,000; hat if the policy of hypothecating securities at a sacrifice, now being pursued, is allowed to continue, the said bank will soon be obliged to suspend payment entirely, and the depositors then remaining unpaid will realize little or nothing on their respective claims.

Wherefore the plaintiff demands judgment.

I. That said corporation, "The Third Avenue Savings Bank" be dissolved.

II. That said bank and its officers be restrained from exercising any of its corporate rights, privileges or franchises, and from collecting or receiving any debts or demands, from paying out or in any way transferring or delivering to any person, any of the moneys, property or effects of such corporation until the further order of the court, and that a preliminary injunction may issue to the same effect.

III. That a receiver of its property and effects may be appointed pursuant to the provisions of the statute in such cases made and provided, with the powers and authority conferred upon receivers in such cases.

IV. For the costs and allowances in this action.

V. For such further or other relief in the premises as may be just and proper.

LEWIS BEACH,

*Plaintiff's Attorney, 27 Park place, New York.*

Dated NEW YORK, January, 29, 1872.

THOS. FLYNN'S AFFIDAVITS.

CITY AND COUNTY OF NEW YORK, ss.:

Thomas Flynn, the foregoing plaintiff, being duly sworn, says that the foregoing complaint is true of his own knowledge except as to

the matters therein stated on information and belief, and as to those matters he believes it to be true.

THOMAS FLYNN.

Sworn to before me, this 29th }  
day of January, 1872. }

ALBERT CRANE,  
*Notary Public, New York County.*

NEW YORK SUPREME COURT, } ss. :  
CITY AND COUNTY OF NEW YORK, }

THOMAS FLYNN, plaintiff, *against* THE THIRD AVENUE SAVINGS  
BANK, defendant.

Thomas Flynn, the above plaintiff, being duly sworn says, that the above defendant is indebted to him in the sum of \$186.02, with interest thereon from the 1st day of January, 1870, the particulars of which indebtedness are more fully set out in the complaint herein; that on the morning of the 30th of January, 1872, at about eleven o'clock, this deponent called at the banking-house of the said defendant, and made demand for the money justly due and owing him, as aforesaid, of an officer of the said bank, known as the paying teller thereof; the said bank refused payment of the said demand, and further deponent saith not.

THOMAS FLYNN.

Sworn to before me, this 30th }  
day of January, 1872. }

TRUMAN H. BALDWIN,  
*Notary Public, New York County.*

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### ORDER OF THE COURT.

NEW YORK SUPREME COURT, } ss. :  
CITY AND COUNTY OF NEW YORK, }

THOMAS FLYNN, plaintiff, *against* THE THIRD AVENUE SAVINGS  
BANK, defendant.

NEW YORK, 2d February, 1872.

On the affidavits herewith served, and on the evidence heretofore taken before the commissioners appointed by the Superintendent of the Banking Department, and on the reports of said commissioners, let the above defendant, "The Third Avenue Savings Bank," show

cause on the 5th day of February, instant, at twelve o'clock, noon, before this court at the chambers thereof, to be held at the New County Court House in the city of New York on that day, or as soon thereafter as counsel can be heard, why an injunction should not be granted, restraining the said defendant from exercising any of its corporate rights, privileges or franchises, and from collecting or receiving any debts or demands, and from paying out or in any way transferring or delivering, to any person, any of the moneys, property or effects of such corporation, and why a receiver should not be appointed of the property and effects of the said defendant, with all the powers of receivers according to the statutes in such case made and provided, and the plaintiff have such other and further relief in the premises as may be just and proper.

GEO. C. BARRETT, *J. S. C.*

Mr. CHAPMAN—In this connection, let me read from the printed testimony as taken before the committee, on page 409, subdivision 5 :

"V. Both of the examiners, in striking a balance, found the liabilities in excess of the assets, but not to an amount; however, which, in my opinion, would justify me in placing the institution in the hands of a receiver. On the contrary, I was clearly of the opinion that with the change of policy in the management of the bank which had then been inaugurated, and with a reduction of salaries and other expenses, which, I was assured by the managers, would be effected, the deficiency in the assets would soon be made good by the earnings of the institution, thus saving to the depositors the expense of closing up its affairs by a receiver. I have since seen no reason to change this opinion, believing now, as I did then, that the course pursued by me was for the best interests of its creditors. I am confirmed in this opinion by the fact that a justice of the Supreme Court has recently refused to grant an order for the appointment of a receiver, after the bank had sustained a run upon it for a number of weeks, upon the ground that the 'insolvency of the corporation had not been shown, nor did it appear that default had been made in paying the plaintiff as a creditor.'"

Mr. President, the respondent now proposes to close the evidence, so far as his side of the case is concerned. Before doing it, however, I wish the indulgence of the chair and of the Senate, while I make a remark or two in regard to one point over which my associate and myself have had some considerable hesitation. The point is this: whether it was best for us to ask for an adjournment of the Senate to get evidence further than we have already before us, showing the depreciation in the value of real estate and showing the values of real estate some three or four years back. On reflection, we have come to the conclu-

sion that there is sufficient evidence in the case, and I would like, for a moment, inasmuch as the mass of this evidence in relation to this was taken before the committee and has not been brought out before the Senate, to call the attention of the Senate to some portions of this evidence that is already here, and that is here uncontradicted from any source or from any quarter. By turning to page 63 in the evidence before the committee, it will be found that James M. Jackson, who testified before the committee, testifies that he is the agent of the Lorillard estate, and has been such for a great many years in the city of New York, some twenty-five years, and that, as such, acting for that estate, he has probably had as much to do with real estate in and about the city of New York, as any man in the city, because, as appears from the evidence, the Lorillard estate is one of the largest estate in the city of New York. He testifies on page 63 as follows:

“Q. When did the market value of real estate commence to go down; before the panic of 1873? A. No; it did not commence until after the panic; real estate held its own better than any thing else.

Q. Until when? A. I should think about 1874.

Q. About the middle of 1874? A. Eighteen hundred and seventy-four and 1875; it was the last to go up and the last to come down.

Q. And in fact it was not until the latter part of 1874 and 1875, that real estate values commenced going the other way, was it? A. I could not say definitely.

Q. That would be your opinion? A. Yes.

Q. It has been gradually falling ever since? A. Yes; pretty fast.

Q. About what, in your estimation, has been the depreciation in real estate? A. From forty to fifty per cent.”

On page 110 another witness in connection with real estate testifies:

“Q. Were you with him in speculations in real estate on Lexington avenue? A. Yes, sir.

Q. Did they turn out badly or good? A. They turned out badly.”

HOMER MORGAN was called by the other side—who will be recognized as one of the largest real estate auctioneers, brokers, and operators in the city of New York—who probably knows as much about the value of real estate as anybody; he testifies:

“Q. How great was the depreciation of real estate generally in this city from 1873 to 1875? A. An average of thirty-three and one-third to forty per cent.

Q. How much has property and real estate depreciated in New York since March, 1875? A. It is on a stand still; I doubt if anybody can give a percentage about it; there is no real market.

Q. Do you mean to say that it has depreciated since March, 1875 ?  
A. Yes, sir.

Q. How much ? A. That I could not answer, not by percentage ; but it is constantly on the decrease ; in other words, there is no market hardly, for any thing, except it is a made up market—manipulated market ; a buyer is supposed to offer a price, the seller won't take it, and the intermediate men work as hard as they can to bring the two together.

Q. Since 1873, then, real estate has had no market ? A. Yes, sir ; since 1873, it has had a market.

Q. Since 1875, I mean ? A. Not that you can call a market ; you cannot find a buyer without a great deal of trouble."

We have instances given in the testimony showing the depreciation in specific pieces of property. In addition to that, we have the case in Middletown, alluded to here the other day, and there is one case which illustrates, as fully as any case can illustrate, and I may be permitted to allude to, that I think will dispose of what I have to say on that. That is the case of one of these banks ; the Bond Street Savings Bank held a mortgage of \$50,000 on which \$24,000 had been paid, from time to time, and finally when this passed over the hands of a receiver, the receiver undertakes to sell this property ; advertising it for sale in New York and in the community around where this property is, and he cannot, on the day of sale, get a bid ; he goes back to the court and asks the court for an order authorizing him to bid it in ; and, although there is no bidder on the day of the second sale, he bids it in, nominally, at the sum of \$6,000. With this testimony, all of it, it seems to us, as a conclusion, that it is not necessary for us to go any further on this question or to ask the Senate to adjourn, in order to get witnesses to show these depreciations, there being no evidence to contradict any portion of it. Therefore, we *rest*.

Mr. TRACY — I introduce the following :

#### GERMAN BANK, MORRISANIA.

[Extract from Minutes of General Meeting, October 14, 1875.]

Mr. Brugmann remarked, in reference to the trustee bonds, that these bonds were not made out properly. It seemed as if the various trustees owed \$2,000 each to the bank.

Mr. Friedman replied that the bonds could not be made out otherwise.

[Extract from Minutes December 29, 1875 (not December 9).]

Mr. Hall, who was present, stated that the Bank Superintendent had declared that he could accept only such securities which the law prescribes, and not at all trustee bonds, to cover the deficiency.

On motion of Mr. Friedmann,

*Resolved*, To cancel all the trustee bonds and appoint a committee of three to confer with those members that are not present, and explain to them what the Bank Superintendent wishes.

The PRESIDENT — Mr. Tracy, have you any more witnesses to call?

Mr. TRACY — No, sir; we *rest*.

The PRESIDENT — The case is *closed*. Do the gentlemen on the part of the respondent desire to address the Senate?

Mr. McGUIRE — All that we can say about that, Mr. President, is that we shall be under the order of the Senate, and whatever order it chooses to make on the subject we shall endeavor to comply with.

The PRESIDENT — What is the pleasure of the Senate?

Mr. McGUIRE — Any *reasonable* order, I suppose; I suppose that was implied.

The PRESIDENT — I do not suppose the Senate will make any unreasonable order.

Senator SCHOONMAKER — Mr. President, I only wish to understand the counsel; I understood the counsel to say that they submitted themselves to the order of the Senate. Now, I suppose the Senate desires to make no order that would deprive the counsel of the right to be heard in this case. I desire to know, for one, whether the counsel desire to discuss the case, and if they do, I desire them to do so?

Senator 'PRINCE — Mr. President, I would like to inquire how nearly the printing is up with our proceedings and when we can have the whole of the printed testimony?

The PRESIDENT — The printed testimony is up to the thirty-first. The Chair has a letter from the State printer saying that some delays have occurred in transmitting the copy to the date of the letter, which is the sixth, instant; says all the copy in the hands of the printer had been printed and forwarded, but the stenographer informs the Chair that a package sent by the stenographer by express, including a great mass of testimony, miscarried and had not reached the printer, as it should have done at the date of the letter to which I refer. The Chair supposes that the remainder of the testimony may be here to-morrow morning.

Senator SCHOONMAKER — Mr. President, I desire to repeat the inquiry, and that is, whether the counsel for the respondent desires to be heard.

The PRESIDENT — Mr. McGuire said he desired to be heard.

Senator GERARD — Mr. President, I move that the counsel for the respondent have until to-morrow for the purpose of the presentation

or their views to the Senate, and the counsel on the other side have Saturday.

Senator WOODIN — Mr. President, I am very much encouraged by the observations made by the Chair in regard to the possibility of our getting hold of this printed evidence. I understood the Chair to say that he supposes the evidence will be here to-morrow, except possibly that which was taken yesterday.

The PRESIDENT — Perhaps it may be well enough for me to say that the stenographer has advised me, as I understand the stenographer, that the testimony now in the hands of the printer would make about 100 printed pages. Mr. Manning wrote me that they would be able to supply, if they had the copy, 100 printed pages a day. They have transmitted 100 printed pages a day; did transmit 100 printed pages yesterday, and the Chair supposes another 100 pages may be expected here to-morrow morning or possibly to-day, which will bring the case down to the end of last week, certainly leaving only the testimony taken this week.

Senator WOODIN — If we had the evidence all here to-morrow morning, I do not think the Senate is quite prepared to go on; there has been a good deal of important testimony introduced here, that Senators desire to read, and I know of several Senators who are absent, who desire to be present when the case is submitted, and have indicated a desire to know how and when they can get the printed testimony, so as to prepare themselves to give judgment on this case. Some Senators are in receipt of letters to that effect. The case has suddenly come to a termination so far as the taking of proof is concerned, and I submit, whether it would not be better to have an adjournment of the case for a sufficient length of time to enable us to get the printed testimony and familiarize ourselves with it, and that an adjournment shall be had to Albany, where we can close this case up, whether it be one week or two weeks or four weeks, it is immaterial to me. I would like to know what the wishes of the counsel are in the case, if they have any on the subject.

Mr. McGUIRE — Mr. President, I think I stated the wishes of my associate, as well as of the respondent, that, unless an adjournment could be had for some considerable length of time while the Senate is now here, we should prefer to close the case up at this time, and, in regard to the evidence that is back, if it cannot be all here by to-morrow, it certainly can by Saturday, and, if the case is to be disposed of during this session, we would suggest here on our part that an adjournment of the Senate be taken till Monday, when we will be prepared to proceed on our part.

Senator HARRIS — Mr. President, I differ somewhat with the Senator from the Twenty-fifth, in regard to waiting for Senators who are absent



before we finish this case. It strikes me, if we wait for them, we should wait until the close of the year, because the Senate is now full, with the exception of one who has gone abroad, and another Senator who has not been here except the first few hours of the first day that we met, and another Senator, who has paid attention to the testimony somewhat, but who has been absent about half or two-thirds of the time, so that, if we shall defer to these Senators, we might as well abandon this case. So far as that suggestion of the Senator from the Twenty-fifth is concerned, I think it has no weight. The Senate is now practically full, as full as it has been at any time since this trial commenced. The counsel for the defense express themselves ready to go on and sum up the case. Of course, the facts are familiar to those Senators who have been in attendance here, and there is no occasion for delay for the purpose of reading the printed testimony. I imagine the Senator from the Twenty-fifth is fully conversant with the general facts and tenor of this case, and there is a probability, from the statement of the Chair, that we are to have the great bulk of the testimony upon our files to-morrow morning. Now, I appeal to the Senate, whether it is not proper for us to proceed to close this case now and at once! Have we not given sufficient time to it? Has it not been delayed long enough? Why should we not hear whatever the counsel for the respondent and the counsel for the prosecution have to say? Then, if Senators need some time to deliberate before coming to a conclusion in forming their judgment, why, delay for a day or two; but it does seem to me that the Senate is as ready now as it ever will be to act upon this case; therefore, I hope that we shall proceed at once and close the case. If the counsel for the respondent, or the counsel for the prosecution, desire to adjourn until to-morrow morning or the next day, or Saturday, very well; but it may be that the counsel themselves will not need more than one day both together, so that I would not favor the motion which has been suggested here, for the counsel on one side to occupy one day and the counsel on the other side the next day, because the counsel for the one side may not occupy but a few hours; then the counsel answering can go on immediately without an adjournment.

Senator WOODIN — Mr. President, the Senator from the Thirteenth has made a most vigorous opposition to an imaginary motion. There has been no motion made here for delay or postponement. I stated what is the fact, that one or more Senators who are absent desire to be put in possession of the printed evidence, so as to qualify themselves to act in the case, and to know something about when the trial will be terminated. That I spoke of as one circumstance not controlling, perhaps, not of very great importance, and I concluded what I had to say by appealing to the counsel to know what their wishes

were in regard to it. The counsel said if the Senate would adjourn till Monday, and give them an opportunity to prepare themselves to condense their argument and present it in a tangible form, and I really believe we shall gain time by acceding to the wishes of the counsel for the respondent. I made no motion to adjourn for one week or one month, so that all the Senator's vigorous opposition to an imaginary proposition to adjourn this case any great length of time was without any purpose. Now, then, the counsel for the respondent having signified a willingness to go on on Monday, that is entirely satisfactory to me, or to-morrow morning.

Senator HARRIS — The counsel for the respondent stated to-morrow and Saturday ; that it would be well to adjourn until to-morrow to hear the counsel on the one side and the next day to hear the counsel on the other side.

Senator WOODIN—Mr. President, I understand the counsel for the respondent to express a desire that the case may go over until Monday, in order to prepare themselves.

Mr. McGUIRE—Mr. President, the Senator from the Thirteenth misunderstood me. I said nothing about to-morrow or Saturday. That was Senator Gerard. I said that we were under the order of the Senate. In view of the testimony not being all here, and wishing to expedite matters as much as possible, I stated we would be ready to proceed on Monday morning if it was agreeable to the Senate.

Senator WOODIN—Mr. President, for the purpose of getting to some motion, so that the Senator from the Thirteenth may bring his guns to bear upon some object, I move that the Senate adjourn until Monday next.

Senator GERARD—Mr. President, there is a motion before the Senate.

Senator WOODIN—What is it ?

The PRESIDENT—The motion of the Senator from the Seventh, was a motion that the counsel for the defense proceed to address the Senate to-morrow, and the counsel for the State address the Senate the next day. The motion of the Senator from the Twenty-fifth is a motion to adjourn, and has precedence.

Senator GERARD—To a specified day ?

The PRESIDENT—Still, it has the precedence.

Senator KENNADAY—Mr. President, I move, as an amendment, to substitute Saratoga instead of Albany.

Senator ST. JOHN — Mr. President, I trust the motion will not prevail : we have now spent three weeks in the examination of this case, and it appears to me that the Senate is competent to judge, after hearing what the counsel on both sides have to say, they will by further delay and postponement. If it is thought proper to adjourn

until Monday, I shall not very much object to it, but I desire to have this go on to-morrow, and let the counsel finish it to-morrow and next day, and I hope that motion may be adopted.

Senator PRINCE—Mr. President, a further amendment is in order ; I move to substitute Monday for Tuesday. I understand the counsel are ready to go on Monday at ten o'clock.

The PRESIDENT—Does the Chair understand the Senator from the Twenty-fifth, to move Tuesday as the day ?

Senator WOODIN—Tuesday as the day, and Albany as the place.

The President submitted the question on the motion of the Senator from the Twenty-fifth, and it was decided in the affirmative.

Senator GERARD—Mr. President, I move to reconsider the vote upon which the amendment was lost. We are here now and all ready for this trial, and have the chairs of the Senators here and have the clerk's desk, and it has involved considerable trouble and expense. At Albany there is no proper watering place, and I think it is a very serious matter. The delay is a very short one, two or three days. I think there is a propriety of conducting this investigation in its present place, and no good reason can be alleged for a change.

Senator JACOBS—Mr. President, I desire to ask whether it will cost the State any more for us to stay here than sit in Albany. If it costs no more money we may as well sit here as there. We had better, for the reason we have a better atmosphere ; we have a room well ventilated, and we have all the advantages for closing up this case. It strikes me that, unless you propose to take a longer adjournment than that suggested by the Senator from the twenty-fifth, that we had better meet here. The counsel will take but a day or two to sum up, and I do not see that it makes any difference, in a financial view, whether we change the place of holding the session or not.

Senator HAMMOND—Mr. President, if there is any earthly reason for the Senate to adjourn to Saratoga to take this testimony, it exists to-day, and why should we pull these traps all up here for two or three days and go to Albany ? It seems to me a ridiculous proposition. While we are here why not close it up here ? If there was any reason to come here, originally, it exists now, and in full force.

Senator COLE—Mr. President, I think there was no reason for coming here. There was no reason why the Senate should leave its usual place of meeting and come here. I think the Senator voted with me on that.

Senator HAMMOND—I did.

Senator COLE—To keep the meetings at Albany.

Senator HAMMOND—But now, as I am here, I propose to stay here.

Senator COLE—Mr. President, this is an important and a great question. If we can get out of the influences of Saratoga, if we can

go back to Albany, where men act gravely, where they consider carefully questions that are submitted to them, and if extraneous influences, which have attracted the attention of gentlemen so that they have not been able to be here and listen with attention, they certainly can give it due attention there; and I know that the Senator from the Thirty-second can appreciate all that I say upon the subject. The adjournment over until Tuesday will put the testimony into the hands of any Senator, so that if he needs to have his attention directed to it, he may do so at his leisure, and then come fresh at his work, and the case will be presented to the Senate at Albany by the counsel on the other side; and we should stay there until we have determined it; and those gentlemen who choose to come here from their arduous labor, can come here again to Saratoga and revive themselves, if they choose. But it seems to me the time has come and now is, that when we do adjourn, we had better adjourn to the usual place of the meeting of the Senate, where we can get our paper and have ready access to authorities, if there is any necessity of them in this case. It seems to me it is trifling with the interests of the State, and with the interests of these gentlemen who are called here away from their ordinary pursuits of life. I hope the motion to reconsider will not prevail.

Senator VEDDER—Mr. President, the Senator from the Twenty-fifth [Mr. Woodin] adverted to the fact that some of the Senators who are absent have sent communications to Senators present as to their absence. I hold in my hand a letter from Senator Sprague that he would desire to have the evidence printed, and he speaks also of a printed brief, in order to guide his judgment to correct conclusions in this matter. The cause of his absence is sickness. I state that simply on his behalf, so that it may be understood that he is absent by reason of a physical inability to be present here. Now, Mr. President, I was one of the parties who voted in favor of remaining at Saratoga, for the reason I see no necessity and no occasion for changing the place of this trial. If a reason existed in Albany why we should adjourn to this place, that reason holds good to-day. I do not know what the Senator from the Twenty-ninth [Mr. Cole] has seen, [nor what he has felt, since he has been in Saratoga. So far as I am concerned, there have been no influences that have attracted my attention from a deliberate, dignified and careful consideration of the matter before us. I think perhaps it is well enough not to be so earthly, as he speaks about. I think we ought, in this trial, to think of some thing besides pure earthly things; and it may be there is something in the society, I will not say in the atmosphere of Albany, that instinctively draws him toward Albany. It may be that he is like the children of Israel, that longed and sighed for the flesh-pots of Egypt, that he longs and

sighs for the flesh-pots of Albany, while in Saratoga. I heartily concur with the Senator from the Third [Mr. Jacobs] that the atmosphere is pure here, the waters are good, all the surroundings are good for correct judgment in regard to this matter, and therefore I am in favor of remaining here because I think our conclusions will be more just, more equitable, more proper, and our minds will be more fair, than if we were to adjourn to Albany.

Senator BRADLEY — Mr. President, my desire is to have this case disposed of as early as possible ; and I am opposed to any postponement of the disposition of this case any longer than the absolute necessity of counsel would require. My desire is to proceed to the closing of the case at Saratoga as soon as possible, and not later than Monday. If this is to go off until Tuesday, or until later than that day, I shall be in favor of going to Albany. To-day is Thursday ; I am unable to go home and get back to Saratoga on Tuesday morning, unless I leave home again this week. No later day than Monday is asked for, and why the Senator from the Twenty-fifth [Mr. Woodin] should move that Tuesday, instead of Monday, be the day, why more time be occupied than is asked for by the counsel, is difficult for me to understand. It seems to me that we could proceed with this case to-morrow, and I shall not strenuously insist upon proceeding with the presentation of this case before Monday morning, if we are advised by the counsel for the respondent that it is necessary, to enable him to present the case, to have until that time to do so. I am opposed to going to Albany, unless this case shall be postponed as late as Tuesday. I voted against the motion of the Senator from the Second [Mr. Kennaday] to substitute Saratoga for Albany, because it was in connection with Tuesday instead of Monday, that that motion was made.

Senator McCARTHY — Mr. President, I voted to substitute Albany for Saratoga because it seemed to me that the views and feelings of the Senate were in favor of an adjournment until Tuesday, and that we should also meet at Albany ; but I am in favor of proceeding at once, and to-morrow, with this case. I do not understand, sir, that the counsel for the respondent have made any urgent demand for an adjournment. They have suggested that we adjourn to a certain time, but that they were under the order of the Senate, and they made no strong and positive request. I do not require an adjournment for the purpose of examining this case, until next Tuesday, to arrive at a conviction as to the fact. It does seem to me, sir, that there is a disposition on the part of the Senate, and it has been evident from the beginning, to delay this thing from day to day, and to adjourn, and to accommodate themselves to such circumstances as I think we were not warranted in doing. I say, sir, the very atmosphere

of this place, in the beginning, was detrimental to our progress, and to our duty here ; and, finally, at the latter end of the case we have worked up into a fair and judicious attention to our business. The adjournment for three or four days breaks up that attention again, distracts our minds again, and carries us away from the important subject which we have before us. In my humble opinion it is our duty, and the duty of the Senate, to proceed with this trial to-morrow morning, and to close as much of it as we can by Saturday night, and, if necessary, to go over until Monday, and finish up the business without any other adjournment.

Senator WOODIN—Mr. President, I withdraw the motion.

Senator COLE—Mr. President, I beg leave to renew it.

The PRESIDENT—The Chair is of the opinion that the Senator from the Twenty-fifth [ Mr. Woodin ] has not the power to withdraw the motion.

Senator STARBUCK—Mr. President, the argument of the last two Senators up, has proceeded upon the idea that if the motion to reconsider prevail, the conclusion is a foregone one that we postpone the further hearing until next Tuesday. By the considerations they have addressed to the Senate that idea is somewhat dissipated, and I have less to say than I would have had to say, but for the remarks that have fallen here. There is no occasion for a postponement of this hearing to Albany, or, let us say, to Tuesday next. If the counsel for the respondent will say that they desire to-morrow for preparation and will be prepared to proceed Saturday morning, I will, most cordially, yield to that. Then I will remain in my place as every other Senator will, I trust, and hear the argument that is to come from the counsel for the prosecution on Monday. But I do invoke Senators to vote for this motion, not to send to their homes this body with the chance of coming back again. As has been said here, the Senate is now full ; a better attendance, it is predicted, then will be here again during this session, if we adjourn. Now, I invoke Senators to vote for this motion to reconsider, and having voted for this motion to reconsider, we will then be prepared to take up and deal with the question, when we shall proceed with the argument. I shall be satisfied with to-morrow morning ; I will yield to them Saturday, and they may begin Saturday ; I may see this debate, this argument in the case closed and submitted to the Senate before Saturday night ; or, if it cannot be by that time, then Monday night. I invoke Senators to stay here. I would do injustice, perhaps, to the occasion, if I should sit down without repudiating the idea that there is any thing that is mischievous about the atmosphere of Saratoga. We can perform duty here as well as in Albany. We are here to perform it. Let us stay here and perform it like men, and not take another adjournment and delay this case.

Senator WOODIN—Mr. President, I am sorry the Senator from the Eighteenth [ Mr. Starbuck ] should have led so many Senators into the error of attributing to this latitude the presence of some mysterious influences, when the very thought originated with him ; and he spoke eloquently to the Senate only ten days ago, expressing his regret that the Senate had come to Saratoga.

Senator STARBUCK—No, sir.

Senator WOODIN—That he was tired of Saratoga.

Senator STARBUCK—No, sir ; not a word of it.

Senator WOODIN—That he wanted to withdraw from its atmosphere.

Senator STARBUCK—Not a word of it.

Senator WOODIN—It has all originated with the Senator, and he has led others into copying him ; and now, when they have all spoken, he deserts them. I am sorry also that the Senator from the Eighteenth [ Mr. Starbuck ] only last week voted and spoke for an adjournment of the case over until next week, losing four full working-days' time ; and immediately scudded away on a tour of pleasure—perhaps of business—and this morning he rises here and chastises all of us, and is in favor of meeting at Albany on Monday or Tuesday. Oh, how many times he has led us into ambush, and, when we were exposed, make a record right for himself and leave the rest of us right in the lurch. You cannot play that on me. Now, if the counsel for the defense is prepared to go on to-morrow morning, I am in favor of reconsidering, and allowing them to go on. But we all know that the counsel for the defense are exceedingly modest men, and they need to be urged to ask what properly belongs to them, and I know that they both desire that the case should go over until next week, in order that they may have a little time to get ready ; and they would feel quite embarrassed if the Senate should make an order that they proceed to-morrow, or any order to force them to the point of asking this Senate that the case may go over until next week. I hope the vote will be reconsidered, and we will find out then what their earnest desire is in regard to it.

The motion to reconsider prevailed.

Senator BIXBY—Mr. President, I would like to inquire who it was they laid into ambush ?

Senator WOODIN—Mr. President, that is a very proper question. The Senator from the Eighth [Mr. Bixby] has a private grief. I do not know whether it is proper for the Senate to consider it or not. "Ambush" was the horse he staked his money on, and lost.

Senator PRINCE—Mr. President, I move to amend by substituting Saturday in place of Tuesday.

The PRESIDENT—The question is now, to substitute Saratoga in place of Albany.

Senator SCHOONMAKER—Mr. President, if carried, does the Senator intend to move that Saturday be the day, instead of Tuesday ?

Senator KENNEDAY—Mr. President, I desire to ask whether it would be in order for the Senator to withdraw the motion.

The PRESIDENT—The chair is of the opinion that it would not be.

The motion to amend so that the trial shall be continued at Saratoga, was submitted to the Senate, and decided in the affirmative.

Senator PRINCE—Mr. President, I now move to substitute Saturday for Tuesday.

Senator McCARTHY—Mr. President, is it in order to move to substitute to-morrow ?

The PRESIDENT—It is.

Senator McCARTHY—Mr. President, then I make that motion.

Mr. McGUIRE—Mr. President, the counsel for the respondent desires to say that if there was any use in the Senate taking any testimony at all, the testimony should be before it at the time of the presentation of the case, to the Senate, by the counsel. If the testimony is to be ignored, if we are not to have it in the consideration of the case, why, then, we might just as well proceed immediately as Saturday, because it is quite evident that the testimony cannot all be procured by Saturday morning. While we do not wish to be pertinacious, or to ask any thing unreasonable of the Senate, we do beg indulgence of the Senate to postpone this case to at least Monday, to enable us to get the testimony properly arranged to present it.

\* The PRESIDENT—I will state that the Chair will endeavor to have the testimony in the hands of the counsel at least two hours before the Senate meets on Saturday morning, completed.

Mr. McGUIRE—Mr. President, there is another suggestion that we desire to make, and that is this ; undoubtedly, during the entire session of Saturday, we shall be engaged in the presentation of the case to the Senate. Now, if we are required to present our side of the case on Saturday and then the case is postponed until Monday, for the benefit of the people's counsel, why I will say, with all due respect to the Senate, that I prefer to take up the case instantler, and go on with the argument. I prefer, however, Monday.

Senator GERARD—Mr. President, I think they are entitled to that.

Senator HAMMOND—Mr. President, I move to amend that the Senate adjourn until Monday morning, until ten o'clock, in view of the request of the counsel for the respondent ; it seems to be the wish of the Senate, and I move to make it Monday afternoon at four o'clock ; it is not right that we crowd the respondent in this way at all, if they ask this time, and therefore I am in favor of adjourning to next Monday.



Senator BRADLEY—Mr. President, I move to amend by making it Saturday.

The PRESIDENT—That question is already before the Senate.

Senator BRADLEY—Mr. President, I move to amend by putting it Monday morning at ten o'clock.

The PRESIDENT—There are two amendments now pending.

Senator COLE—Mr. President, I move to amend by putting it Tuesday morning at ten o'clock.

The PRESIDENT—That question is now before the Senate on the motion of the Senator from the twenty-fifth [Mr. Woodin] that the Senate adjourn until Tuesday, and the Chair will now put the question upon the motion as amended.

Senator COLE—Mr. President, what was the amendment.

The PRESIDENT—The amendment is, that the Senate meet on Monday at four o'clock.

Senator COLE—Mr. President, then I move to make it eleven o'clock Tuesday; I desire to say a single word upon that; in all gravity, I make this statement that, while some Senators have been able to gather up this great question in their minds, and to fix the testimony precisely where they would have it, I am among that number that are not entirely able to accomplish that object. If I can have the testimony before me fully and complete, I shall be very willing to follow the counsel on both sides in their arguments, and to gather up what I could from the testimony that has been recently taken; if we have until Tuesday, in the meantime those who are disposed to read it will have ample time and can have no excuse to say they are not prepared to vote upon this question, because they have not read the testimony; but I doubt whether Senators here have given this question that attention, some of them at least, that they are prepared to vote upon this question with a proper consideration of the evidence; I think the adjournment should be until Tuesday instead of Monday.

The PRESIDENT—The Chair respectfully advises the Senator from the Twenty-ninth [Mr. Cole] that the Senate, by its action, has already fixed the day and hour of adjournment, and the only way the Senator from the Twenty-ninth [Mr. Cole] can reach his purpose is by making a motion to reconsider.

Senator COLE—Mr. President, I desire to make that motion.

The President submitted the question upon the motion of the Senator from the Twenty-fifth [Mr. Woodin] as amended, and the motion was decided in the affirmative.

The President here announced the Senate stood adjourned till Monday next at 4 P. M.

SARATOGA SPRINGS, *August 13, 1877* — 4 P. M.

The Senate met pursuant to adjournment.

Mr. CHAPMAN — Mr. President, inasmuch as the Senate has not, by any order or resolution, fixed upon the order of argument — a thing that is always done, I believe, in cases of this kind — I would call the attention of the Senate to a resolution which was adopted by the Senate on the trial of George W. Smith, the county judge of Oneida county, which was presented in the form of a resolution by Judge Folger, then a member of the Senate. It reads as follows:

“*Resolved*, That, in the argument of the case of *The People v. The County Judge of Oneida County*, one counsel for the prosecution be heard in the opening of the case for the people, and that one or two counsel be heard for the respondent, and that one counsel for the prosecution be heard in conclusion.”

Then the resolution goes on to fix the day and the time when the argument should commence. All that it is necessary for me to call the attention of the Senate to is so much of the resolution as I have read. This is a resolution which was adopted in that case without dissent, so far as I see from the reading of the journal, and after the closing of the evidence on both sides, it seems there were two counsel present on each side, and that line of procedure was adopted. So far as I am able to investigate the other cases that have been tried before the Senate or before the Court of Impeachment, the same line of action has been adopted. I, therefore, ask that a resolution to read as follows, be adopted:

*Resolved*, In the argument of the case of *The People of the State of New York against DeWitt C. Ellis*, one counsel for the prosecution be heard in the opening of the case for the people, and that one or two counsel be heard for the respondent, and that one counsel for the prosecution be heard in conclusion.

Senator GERARD — Mr. President, I move that a resolution to that effect be adopted.

Senator SCHOONMAKER — Mr. President, I desire to ask whether this is the result of consultation between the counsel on the respective sides.

Mr. TRACY — Mr. President, it is not. We came here, on the part of the people, supposing that we should hear the respondent this afternoon. That was understood from what was said here at the last meeting. They desired some time for preparation before they could be ready, and we supposed that we were to hear them this afternoon. I think they were called upon to proceed, and stated that as a very

good reason why they did not proceed at that time. This is an entire change of plan.

Senator LAMONT—Mr. President, it would aid me very much in voting upon this question, if I knew whether there was to be more than one to address the Senate on the part of the State, whether the arrangements of counsel for the State are such that more than one is to address the Senate upon the final statement of the case.

Mr. TRACY—Mr. President, I beg to say, in response to the Senator, that with the understanding I have mentioned, we have arranged that one counsel only be heard on the part of the State.

Senator GERARD—Mr. President, this resolution does not prevent the same counsel speaking twice. I think it might be well and proper to hear what the counsel for the State has to say.

Senator STARBUCK—Mr. President, I desire to inquire of the counsel for the people, whether or not the departure from the formula under which, as they understand it, they came here, will operate any embarrassment to them. To me, it seems as though they might, with facility, adapt themselves to it, and if such a method of procedure be more acceptable for the defense, I should hope they might accommodate themselves to it, and let us make the order they ask for.

Mr. TRACY—Mr. President, I beg to be excused for getting up again, but I think, I must say, with the few moments that I have had to reflect upon the matter, that I do not think we shall be at all embarrassed to sum it up upon our part immediately. We could make a good deal of progress in it this afternoon. I shall interpose no objection to the Senate making such an order on the subject as they think judicious. I think in the impeachment cases, the practice upon an indictment has usually been followed. In this case, we had to open our case very fully at the outset, and the counsel for the other side had time before proceeding after we rested, and they waived an opening; and, to this day, we are not informed of their views except as we elicit them by inference from their course of examination.

The question was submitted to the Senate on the adoption of the resolution as worded by Mr. Chapman, and it was *adopted*.

Senator SCHOONMAKER—Mr. President, I move a reconsideration of that vote. I was not listening when the question was put. I was not aware that the vote was being taken, and I doubt whether the Senators generally, understood what they voted for, in voting for this resolution. The effect of it is that the counsel for the State must first be heard, and that the defense have the answering argument.

Mr. CHAPMAN—And then they reply.

Senator SCHOONMAKER—That only one counsel for the State speak, and if they are required to speak in the first instant, there is no

rejoinder. I do not think the Senate intended to put itself in that position.

Senator KENNADAY—Mr. President, I think the Senate does not understand the position of the case as stated by the Senator from the Fourteenth [Mr. Schoonmaker]. We voted upon the resolution with the understanding that the counsel for the State should first open and close the argument. That is the understanding, and that is the reading of that resolution. It may be done by the same gentleman. That the counsel can regulate, but the counsel for the State both have the opening and the closing. There is no doubt about that.

Senator SCHOONMAKER—Mr. President, I understand the counsel for the State, Mr. Tracy, to say that only one counsel intended to speak for the State; that he has only one speech to make.

Senator LAMONT—Mr. President, that may not be so.

Senator SCHOONMAKER—Mr. President, I am stating what I understand the counsel to say. If I am in error, the counsel will correct me. Now, the effect of that order is that the counsel for the State must make the first argument. Now, if the Senators desire that, then, of course, this resolution is right. If they do not desire it, it is wrong. I believe it is wrong for my part.

Senator STARBUCK—Mr. President, it is very clear to me that the Senator from the Fourteenth [Mr. Schoonmaker] is mistaken as to the effect of the rule that has been adopted by the Senate. The practice that has obtained largely in equity jurisprudence, if the Senate adhere to their rule, will be acted upon here. The counsel on the part of the prosecution is called upon under this rule barely to put his adversary in possession of the leading points on which he relies and the authorities that he will cite, if any. He thus puts them sufficiently in possession of the case and his view of it, to enable them to treat it. His speech will be brief; and, after the adverse party is heard, his main argument will be delivered by himself, and whether there are one or two counsel, it is not a factor that enters into or ought to influence this question at all. Dissenting from the Senator from the Fourteenth [Mr. Schoonmaker], I hope the Senate will adhere to its decision, and let the distinguished counsel for the State put us and his adversary in possession of his leading points and authorities—a brief proper—then let us hear them in reply, and hear their presumptive defense. Then it will be timely for the counsel for the State to come in and present his views of his entire case, and his answer to the argument of his adversary; and, having that view of the situation, I see no reason for the Senate to recede from its action; but let us stand as we have resolved to hear the brief opening of the counsel for the State of his argument, and then let us hear the argument, on the other side rendered by one or two at their leisure, and

then let us hear the argument on the part of the people, rendered by the same man who made the opening, or by another as they shall prefer.

SENATOR SPRAGUE—Mr. president, I agree entirely with the views of the Senator from the Eighteenth [Mr. Starbuck], except that I think it is better, perhaps, to allow the counsel for the people, as well as the counsel for the defense to take their own course as to whether they will be brief, or whether they will not be brief or as to whether in the first instance they will go fully into their case, or simply into an outline of it. I understand the counsel for the people to say they have prepared to sum up the case by one counsel. If the people desire to do that now, I see no objection to it. That is the English fashion, that the opening address is the people's going fully into the case, it gives the fullest notice to the defendant as to what is alleged against him ; and then, if the counsel for the people desire to make a reply, then they can do so. I trust the resolution as adopted will be adhered to.

MR. TRACY—Mr. President, I should say that if we had known, or supposed, or expected, an arrangement of this kind, we should have made a very different arrangement about our course of procedure. A part of our preparation is not yet made, but I assumed it would be ready at the time it was wanting. We have two counsel here, one of whom might have opened the case, and the other closed it ; but, from the beginning, I supposed this no exception to a trial in the court of impeachment, or any other tribunal where matters of fact are inquired into, and where the prosecuting party is required by his counsel to develop his case by a full opening, and then give his proofs, and the other side is then required to give an opening, if he chooses, and then develop his proofs, or at the close of his proof, go on and develop his case, show on what ground he stands, what he claims ; and then the other party can reply. This is a very peculiar case, where there has been no opening at all, and no communication to us whatsoever of the views which they claim, except, as I have said, as we gathered it somewhat, and perhaps imperfectly, from their line of cross-examination. I think, sir, that in judicial proceedings, it is the course insisted upon, but, of course, we are under the control of the Senate, it would be a departure from all precedent whatsoever that I know of, except in the case of Judge Smith, upon some reasons that might have been made known at that time.

MR. CHAPMAN—Mr. President, my friend suggests the idea that the proposition is contrary to precedent, except in the case of Judge Smith. My friend is unfortunately in error. The proposition which I have presented here is precisely in the language of the case of The People against the County Judge of Oneida County. I happen to have

another book here, the report of the trial of Horace G. Prindle, which proceeded before the Senate, and in that case the counsel for the prosecution opened, and opened very extensively, covering something like 100 printed pages ; indeed, went into his whole case ; and I submit that there is an eminent propriety in that being done in this case where we have these large number of banks and 2,000 pages of testimony, not all of it yet printed. I submit that there is an eminent propriety that the same line of procedure which has been established by this very body should be followed in the case ; and I submit that Senators will find in the other cases that the same line of procedure has been followed from the first to last. I think, without exception.

Senator SCHOONMAKER—Mr. President, abstractly, the mode of proceeding indicated by this resolution may be correct. It may be well enough ; but the difficulty is that this mode adopted now is stated by the counsel for the State to be a surprise to them, that he was given to understand at the time of adjournment, on Thursday last, that the counsel for the defense would first speak.

Senator STARBUCK—Mr. President, as a predicate to the remarks I had the honor to submit, I asked the counsel to say whether the adherence of the Senate to this resolution would in any sense embarrass them, and they answered in the negative.

Senator SCHOONMAKER—Mr. President, I beg leave to differ with the distinguished Senator from the Eighteenth [Mr. Starbuck]. He must have misunderstood the counsel. The counsel stated just the contrary. I understood the counsel to say that his preparation was not complete ; that the reason for it was that he expected the counsel for the other side first to address the Senate. Now, am I correct ? It is a statement of fact. If that be so, then this order is a surprise to the counsel and is wrong for that reason. If the Senate has led the counsel into an error. Now, if the counsel for the State say that notwithstanding that surprise, they are willing to go on, I have no more to say.

Senator SPRAGUE—Mr. President, I understand from the counsel that they are perfectly willing to go on.

Senator SCHOONMAKER—Mr. President, I withdraw my motion. I ask unanimous consent now to amend rule 7, so as to make it conform to the motion of the Senator from the Thirty-first [Mr. Sprague]. By reference to pages 7 and 8 rule 7 will be found, and it is necessary to correct that rule so as to make it conform to this resolution. I therefore ask unanimous consent that it be corrected as follows. I will call the attention of the Senate to the change proposed to be made.

By rule 7, as originally adopted by the Senate, the vote required to be taken was follows :

“ Each Senator, when so questioned, shall rise in his place and an-

swer 'Proven' or 'Not proven.' This changes it so it will be 'Aye' or 'No.' "

The President submitted the question on the motion of Senator Schoonmaker, and it was decided in the affirmative.

Senator SPRAGUE—Mr. President, perhaps it is the right of each Senator, and, as it seems to me, it is perhaps the duty, that any Senator who shall desire it, should indicate in advance to the counsel in this case any particular point or aspect of the case to which his own mind has been drawn, and as to which he desires to be enlightened, so that the counsel will not be taken by surprise at any of the views of Senators upon this grave matter. Now, there are three questions to which I am very anxious for my own enlightenment that the counsel in this case should give their attention. I have reduced them to this form, and I respectfully ask the attention of the Senate to them.

"Assuming that the Third Avenue Savings Bank was irretrievably insolvent in March, 1875, and that this was known at that time to its officers and to the Superintendent of the Banking Department; and also assuming that the superintendent permitted the bank to continue its business until September, 1875, I understand him to urge as one reason for the delay that in his judgment the effect of closing the bank at an earlier period would have been disastrous to other savings banks, as well as to other financial interests. I suppose, therefore, that one of the principal and vital questions each Senator will have to determine in his own mind will be whether the reason urged affords any justification of the delay in the action of the superintendent. To enable me to come to a conclusion upon this branch of the case, I should be glad to hear an argument upon the following questions :

*First.* In continuing to pay its depositors subsequently to March 1875, was the Third Avenue Savings Bank guilty of a fraud upon the United States bankrupt act, by making preferential payments within the meaning of the thirty-fifth and thirty-seventh sections of that act and if so, does the reason urged by the respondent afford any justification for permitting such a fraud to be perpetrated?

*Second.* Were the payments to depositors made by the Third Avenue Savings Bank subsequent to March, 1875, in violation of the provisions of section 9 of article 1 of title 2 of chapter 18 of part 1 of the Revised Statutes, which in substance forbids any payment by a moneyed corporation, when insolvent or in contemplation of insolvency, with intent of giving preference to any particular creditor over other creditors; and if so, does the reason urged by the respondent afford any justification for permitting such violation of the statutes?

*Third.* Was the receipt of deposits by the Third Avenue Savings Bank after March, 1875, without any notification to depositors of its

insolvent condition, a fraud upon each depositor, according to the law of this State, as laid down in the cases of *Nichols v. Pinner* (18 New York Reports, 295), *Hennequinn v. Naylor* (24 New York, 139), *Stewart v. Strasburger* (51 Howard, 388), *Brown v. Montgomery* (20 New York, 287), *Chaffe v. Flint* (2 Lansing, 81), and, if so, does the reason urged by respondent afford any justification for permitting the perpetration of such fraud upon the depositors in said bank?"

## ARGUMENT OF MR. CHARLES TRACY, ON BEHALF OF THE PEOPLE.

MR. TRACY—Mr. President, at the opening of this case three weeks ago to-day, in the presence of most of the Senators who are now here but not of all of them, we deemed it necessary to state what the legal provisions were for this Banking Department, and the superintendent, as well as for the power of removing him. It is proper now to go over that matter again with a little more care, and to bring it to the notice of Senators who are now approaching the matter of making a decision, so that they may have it fresh in hand, and not on three weeks' recollection. In the first place, then, a savings bank, and this loan and trust company, and the Loaners' Bank, all of them are moneyed corporations, so defined by statute precisely, as institutions which have power to do a banking business, to lend, or to lend upon pledge of property, is a moneyed corporation by distinction. All these institutions therefore are moneyed corporations. I refer Senators to the first volume of the Revised Statutes, page 598, section 51, where this is defined, and it seems that it should be examined now.

MR. MCGUIRE—What edition of the statutes do you refer to.

MR. TRACY—The original edition; I never refer to any other if I can help it.

"Sec. 1. The term, 'moneyed corporation,' as used in this statute, shall be construed to mean every corporation having banking powers, or having the power to make loans upon pledges or deposits, or authorized by law to make insurances."

The title used here covers all this description of things and it is the definition which has been applied, and has even been applied by the Court of Appeals to some institutions out of it, upon the theory that they were near enough to it. All the cases presented here are cases of moneyed corporations. In respect to them, there are certain things prescribed.

At page 593 of the same book, there is a full provision which has been in force now nearly fifty years in the State.



"It shall be the duty of every moneyed corporation hereafter created on the first day of January after its incorporation, and annually on the same day thereafter, to make out and send to the Comptroller, in the form prescribed by him, a full statement of its affairs, verified by the oaths of its president and cashier, or treasurer, or secretary. Each statement so transmitted shall contain"—

I will not read the particulars, but there are eight particulars of duties, liabilities and transactions of these moneyed corporations, and after the first one there are certain other things: "In each subsequent statement so transmitted there shall be contained the amount of losses of the corporation, and charged, specifying whether charged on its capital or profits since its last preceding statement, and of its dividends declared and made during the same period; and *second* the average amount for each month during the preceding year of debts due to and from the corporation;" and then, if it has power to issue bills and notes, there is a further provision in that respect.

The act provides that any corporation which shall neglect to do this thing and be in default a month, may be proceeded against and dissolved as an insolvent corporation. And here I beg this tribunal to observe that the Legislature at that early day had in view the fact that moneyed corporations required public care, watchfulness and regulation. There are ample provisions about other corporations, but moneyed corporations are dealt with as a specialty, and they are required to come up to the rule or be thrown out of their franchises and be dissolved. Then there was a provision not only that they should do this, but there was somebody charged to see that they did it,

It shall be the duty of the Comptroller to enter every such statement received by him in a book to be provided by him for that purpose; and it shall at all times, during office hours, be open to public inspection"—so that any citizen could go to the office and make an examination. "If it shall appear to the Comptroller from any statement received by him, that a provision of its charter or title has been violated by any corporation, or that there is reason to apprehend that any incorporation is, or may become insolvent, it shall be his duty to report the fact, together with his opinion thereon, without delay, to the Legislature." And it is his duty to prepare statements and reports to the Legislature on that subject.

Such was the general provision in this respect. At a later day, the Legislature deemed it better that the Comptroller's office, burdened with its care of moneyed corporations and with its care of the finances of the State and of unpaid taxes of the State, etc., and records needed to clear up titles in the office upon the old grants and tax returns and sales, should be relieved from some of its duty and a new department

instituted, called "Bank Department," to take all the care in respect of moneyed corporations.

So, in 1851, chapter 164, page 369, volume 3, sections 1, 3 and 11, the powers and duties of the Comptroller as to the banks and moneyed corporations, in these respects, were all transferred to this new department, and an official was provided to be at the head of it—the Superintendent of the Bank Department, a title indicative of what is meant—some one to be over all these things, and relieve the Comptroller.

It provided the officer should be one of high grade, that he should get his office by nomination of the Governor and consent of the Senate and be liable to be removed in like manner upon the recommendation of the Governor and the vote of the Senate, and not otherwise. Still there were no new powers conferred. He held the position that the Comptroller did, and no other, until a later day, until by a certain act of 1851, the Superintendent of the Bank Department began to acquire special power. The act was passed May 20, 1851, chapter 138, in the first volume of Laws of that year, at page 272.

This related particularly to savings bank loans. Now, Mr. President, allow me to say that savings banks, until that time, had been created by special charter, and not otherwise, in this State. They had become very important institutions, of great value and utility, having certain hazards and dangers about them; and being confided in by the poor and unlearned, the Legislature became concerned to take care of them.

I mentioned at the opening, and I will repeat now, that in several messages of the Governors, running through a period of years, clear down to Governor Dix and his predecessor, Governor Hoffman, there were special clauses submitted to the Legislature, calling their attention to the savings banks and to making sure that the depositors, in all cases, were safe, and to see to it that every thing in the way of legislation should be perfect in that respect. It was a most humane and most honorable thing in the Executive of the State of New York to lay before the Legislature, at its opening session, every year, the views which he had about these important measures.

This act, in relation to savings banks, is not a very long one. It has a number of sections, but it showed at once that the Legislature was intent upon what humanity called for, and public duty required—doing justice to the poor.

What is a savings bank? A poor person with a little savings over, having a dollar to spare at the end of the week, cannot go and lend it upon bond and mortgage, cannot buy a share of railroad stock; he cannot judiciously lend it, it is too small a sum. He wants a place where he can lend it which is as safe as the government itself, and as

sacred as any thing; where a man can put his money and have it come back to him in safety, and gain a little interest. The old system of putting it away in an old stocking, and hiding it under the bed was a precaution, and yet was a source of anxiety and produced no income. The money ought not to be where it can be touched in a moment. And all the consolation there is for the poor, in respect of thrift and rising and keeping up in this world is in their savings. They cannot make strikes on the market. They cannot make large transactions and say: "If I have lost to-day I can make to-morrow," but it is a little margin over of this week's earnings that must be put somewhere to take care of them, when they or their children are sick, and when they are old, and when hard times come, and they can earn nothing. It is one of the most beautiful things to think of that the State of New York was honored for its savings bank system. It never had the miserable law existing in another State, that savings banks could discount promissory notes, and sell bills of exchange and thus impair and swamp their money. The State of New York always provided that the money should be received by the bank, and *for the depositors*. There was to be no profit. It was to be an institution to carry out a philanthropic purpose. It would require some paid servants, it would require some accommodations and quarters; but the supervision of it by trustees was almost too great a trust, and the government was impelled by a sense of what is due from those who are well off, and have superior powers of mind to take care of themselves and knowledge of the affairs of the world, to guard it for those who are lacking in these respects. A savings bank not required to report, but left to run at its own wild way, proves a snare in a civilized country. This law of accumulation is the first principle of civilization. The Indian whom I met fishing near the wild woods, upon a lake, when spoken to about securing something for the future laughed at the idea; he said he would fill himself up and risk the future. That was the savage idea; but the civilized person looks out for the future, and lays up something for a rainy day. This act in its first section provides that, "all of the savings banks shall report to the superintendent once a year their condition and they shall state therein the amount due depositors, the total amount of assets of every kind, the principal sum of each and every bond and mortgage, with the estimated value of the property upon which it is based; the amount invested in stocks, designating the particular kind of stocks, and the estimated market value of the same; the amount loaned upon the security of stock, with a description of all the stock so held, the amount loaned on personal security; the amount invested in real estate, the amount of cash on hand or on deposit in bank, with the names and the amount placed in each, and the amount loaned on

deposits in any other manner than herein described." Then they must give the number of open accounts; and a series of provisions followed, giving to this department a perfect scheme, showing how all the banks have been managed during the year, and making the duty of the superintendent on or about the first of February in each year to communicate to the Legislature the condition of all the savings banks, as he gathered them.

Then comes a provision to watch over them. It is a very limited one.

"Whenever any savings bank, or institution for savings, shall fail to make a report in compliance with this act; or whenever the Superintendent of the Bank Department shall have reason to believe that any savings bank, or institution for savings, is loaning or investing its money in violation of its charter, or of law, or conducting the business in an unsafe manner, it shall be his duty, either in person or by one or more competent persons that may be appointed to examine their affairs."

That is the first law for examining them, and nearly in the language as it exists to-day.

"And whenever it shall appear to the superintendent from such examination, that any savings bank, or institution for savings, has been guilty of a violation of its charter, or of law, he shall communicate the fact to the Attorney-General, whose duty it shall then become to institute such proceedings as in the case of insolvent corporations."

Then there is a provision about the expenses:

"That the Superintendent of the Bank Department is authorized to employ, from time to time, so many clerks," etc. It is made his duty to report their names to the Legislature and the amount of expenses.

In 1871 we find a more perfect provision for this year, by an amendment of the section I have last referred to. That was section 3, Laws of 1871, chapter 693.

There are four different powers here given to the superintendent, and one given to the Attorney-General and court. I beg the patience of Senators in listening to it, as I cannot furnish them all with copies of this book.

"It shall be the duty of the Superintendent of the Bank Department, as often as once in two years, either in person or by one or more competent persons by him appointed for that purpose, to visit and thoroughly examine every savings bank, or institution for savings, that shall be organized and doing business in this State, and the results of such examinations shall be embodied in his annual report concerning savings banks, required by this act to be submitted to the Legislature."

You will observe before he had this power to make an examination if he found something wrong. This says: "Once in two years he shall make an examination." He is not exempt from making a thorough examination even of the Bowery Savings Bank, with a surplus of \$4,000,000. He shall, by himself or agent, thoroughly visit and examine each one of them. The examination is made an incumbent duty, "as often as once in two years."

"And whenever any savings bank, or institution for savings, shall fail to make a report in compliance with this act, or whenever the superintendent shall have reason to believe that any savings bank, or institution for savings, is investing money in violation of law or its charter, or has reason to believe it is conducting business in an unsafe manner,' then his duty arises; if he has reason to believe those two things, it shall likewise be his duty, 'either in person, etc., to visit and thoroughly examine the affairs and transactions of such institution,' although he may have had an examination made 'once in two years.'"

Those are called "regular examinations;" yet, if he has reason to believe any thing wrong is going on, he shall go right off and make another examination, and sift it to the bottom. The State meant there should not be any mistake about the savings banks. It was his duty immediately, then, to make examination when such facts came to him as to make him believe it was his duty to do so. \* \* \* "And whenever it shall appear to the superintendent, from any examination made pursuant to the provisions of this section, that any savings bank, or institution for savings, has been guilty of a violation of its charter or of law, or is conducting business in an unsafe manner, he shall, by an order, under his hand and seal of office, addressed to the institution so offending, direct discontinuance of such illegal or unsafe practices, and a conformity with the requirements of its charter and of law with safety and security in its transactions." \* \* \* The language of man cannot improve that passage. It was repeated afterward in the other act, when it was broken up into new sections. The contingency under which the power or duty arises is that it has done something in violation of its charter or of law, or is conducting the business in an unsafe manner.

What is an unsafe manner? If they are going on and doing business which puts in peril the depositaries, *that* is unsafe. They are the only persons to be looked after. Then what is to be done? In this case you will find this superintendent had it before him plainly that they had been guilty of a breach of the charter or a breach of the law; that they were conducting business in an unsafe manner. What kind of an order was he to make? It seems from the examination of Mr. Ellis that he has never exercised that power in one case.

He did not disclose that it had not been exercised till finally the question was put to him. In not one of these cases did he exercise that power at all. It is a power that has finality attached to it.

If he makes an order under his hand and seal, it must be obeyed. If it is broken, the bank violates its charter, and he can hand it over to the Attorney-General. But he writes them a letter, and they come and see him. That did not give him this power at all. This power he never exercised once. It is like the injunction process, the preliminary injunction of the court to stop a man from doing a thing, for the present, and by and by it will be looked into further. That is what was given to them, the power to stop them. Stop them from what? Not only from carrying on illegal and unsafe practices, but requiring them to conform to the requirements of the charter and law, and conform to safety and security in their transactions. You will observe, if he finds it is guilty of illegality of any description, he can sit right down and make an order and express just that clause in it,—carry on your business in such a manner as to be in conformity with safety and security in your transactions—he need not say they must stop this or that thing, but he has power to issue his mandate, saying: “Conduct your business in conformity with safety and security in your transactions.” That power he has never once used.

Now I will go on the *fourth*. “And whenever any savings bank or institution for savings shall refuse or neglect to comply with such order, or when it shall appear to the superintendent that it is unsafe or inexpedient for it to continue to transact business, he shall communicate that fact to the Attorney-General, whose duty it shall then be to institute such proceedings against such savings bank, or savings institution, as are now or may be hereafter authorized by law in case of insolvent corporations.” It provides that “when it shall appear to him that it is unsafe, or that it is not expedient for any savings bank to transact business, he shall communicate that fact to the Attorney-General; then the Attorney-General’s duty arises.

The State of New York, by its Legislature, did not mean to have any tampering with the rights of the poor. If a savings bank was guilty of illegal transactions, or was unsafe or insecure, the Legislature meant to put it in the power of the Superintendent to stop them—to hand them over to the Attorney-General, and the Attorney-General to have that bank wound up and to no longer be a fraud upon the poor. “The Superintendent of the Banking Department, and the person or persons who may be appointed by him to examine the affairs of any savings bank, shall have power to administer oaths to any person whose testimony may be required on any such examination, and to compel the appearance and attendance of any such person for the purpose of such examination, by summons, subpoena or attachment, in

the manner now authorized in respect to the attendance of persons as witnesses in the courts of this State ; and all books and papers which may be deemed necessary to examine by the superintendent, or the examiners so appointed, shall be produced, and their production may be compelled in like manner."

Then the Legislature did not stop at that ; but, in 1875, they took the matter up again. Now, on this great proceeding before this Senate, on the recommendation of the Governor, the question arises whether these things amount to any thing but mere advice, or whether it is sufficient for the superintendent to say : "I thought best not to do it," or whether the law prescribing the rule of his conduct shall be vindicated, and whether somebody shall be found in the State of New York to fill his place, who will not neglect his duty.

The act of 1875, chapter 371, I will now refer to. The act was intended not only to regulate them generally, but to bring them all squarely under the discipline of the department. This is an act of considerable length. It was passed in 1875, while Mr. Ellis was in office, he having gone into office in 1873, and it is mentioned in his deposition as one of the things that he was concerned about, while it was pending in the Legislature.

Section 42 provides that a statement shall be made by the superintendent of the Bank Department to the Legislature, once a year. Then section 43 provides for his examination once in two years. Then it provides the superintendent shall also have power in like manner to examine any such corporation, whenever, in his judgment, he may deem it necessary or expedient. He has the same power of regular examination, and of an extraordinary or special examination, when occasion for it shall arise ; and then there is a power to administer oaths ; and the provisions about expenses, and the term "regular examination" is used. The results of the regular examination during the year shall be embodied in the annual report.

In section 44 it re-enacts or codifies section 43, that, "if a bank has committed a violation of its charter, or of law, or is conducting its business in an unsafe or unauthorized manner, he shall issue an order under his hand and seal of office, addressed to the institution so offending, directing discontinuance of such illegal or unsafe practices, and a conformity with the requirements of its charter and of law, and with safety and security in its transactions," and whenever it shall appear to him that it is unsafe and inexpedient for it to transact business, he is to communicate that fact to the Attorney-General.

Senator WOODIN—Will you refer to section 3 of the act of 1871 and see how it reads ?

Senator GERARD—Are those words "unsafe or inexpedient" in the law of 1871 ?

Mr. TRACY—"And whenever it shall appear to the superintendent that it is unsafe or inexpedient for any savings bank or savings institution to continue to transact business, he shall communicate that fact to the Attorney-General, whose duty it shall then be to institute such proceedings against such savings bank or savings institution, as are now or may be hereafter authorized by law in the case of insolvent corporations, and whenever any savings bank or institution for savings, shall refuse or neglect to comply with such order, or whenever it shall appear to the superintendent that it is unsafe or inexpedient for any savings bank or savings institution to continue to transact business" \* \* \* the language is the same.

Senator WOODIN—"For any such corporation" is the language of the act of 1875.

Mr. TRACY—"For any savings bank" the law of 1871 reads. I will read the 44th section: "And whenever any such corporation shall refuse or neglect to make any such report as hereinbefore required, or to comply with any such order, etc., as the nature of the case may require"—now comes in the additional clause put on as a rider to that: "The proceedings instituted by the Attorney-General may be for the removal of one or more of the trustees, for the transfer of the corporate powers to other persons, or the consolidation, or merger of the corporation, etc., as the nature of the case may require."

Instead of leaving the process of decapitation to have the charter taken away, under the Revised Statutes it provides, if the Attorney-General gets hold of it, he shall take it to the court, and the court shall have discretionary power to prolong its life by changing its management, still looking after the consummation of this interest rather than the destruction of it, when the court sees some good can be done for the bank.

The act creating the office provides that, in case the superintendent is absent, his deputy can exercise all the functions of the office as perfectly as if the superintendent was there, so it was intended this office should continue to go on and have no lapse in it, but there should be somebody there who could act with full power.

I may say that this act of 1875, was passed in obedience to the Constitution of this State, which required the Legislature to do something of that kind. Article 8, section 4 of the Constitution, which was adopted by the people in November, 1874, went into effect from the year 1875.

"The Legislature shall, by general law, conform all charters of savings banks, or institutions for savings, to a uniformity of powers, rights and liabilities, and all charters hereafter granted for such corporations, shall be made to conform to such general law, and to such amendments as may be made thereto. And no such corporation shall



have any capital stock, nor shall the trustees thereof, or any of them, have any interest whatever, direct or indirect, in the profits of such corporation; and no director or trustee of any such bank or institution shall be interested in any loan or use of any money or property of such bank or institution for savings. The Legislature shall have no power to pass any act granting any special charter for banking purposes; but corporations or associations may be formed for such purposes under general laws."

It was put in so that no casualty of legislation should prevent these things being taken care of. There was one bill introduced in the Senate in relation to savings banks and another in the Assembly, and it finally got into good shape. I have a few old charters of savings banks which are indicative of the desire of the Legislature all the way through, that the bank was not in the nature of a moneyed institution borrowing the deposits, and then paying them again, but it was in the nature of a board of trustees for these poor people. They were standing there, not being interested, but as the agents of the poor people to take the small sums and secure them and return them afterwards with such interest as could be afforded. Thus in the German Saving's Bank, "The general business and object of the corporation hereby created, shall be to receive on deposit such sums as may be from time to time offered therefor by tradesmen, clerks, merchants and laborers, minors, servants and others, in such sums on such terms as are allowed by this act, for the purpose of being invested in government securities, or in public stocks created under and by virtue of any law of the United States or of this State, or in any stock or bonds of any city authorized to be issued by the Legislature of this State, and also to loan any money upon bonds secured by mortgage of unincumbered real estate, situate in either of the cities of New York, Brooklyn and Williamsburgh, worth at least double the amount loaned thereon, or in such other manner as is authorized by this act, for the use, interest and advantage of the said depositors and their legal representatives."

That is the way it runs through them all. Technically, it might be said the savings bank was a debtor to the depositor. In point of law it would be so held, but the nature of the arrangement was this, that some good fellows in the neighborhood were willing to take, charge of a savings bank and to perform this benevolent office for the poor and they were to take the deposits, not to run in debt for them, but invest them for the use, benefit and advantage of the poor people.

It is most shocking, indeed, to see how some of these institutions have been managed. They have been managed only to cheat these poor people, in inviting them up marble steps to deposit their money in a bottomless pit; and these officers very well knew it, and the man

at the head of the Banking Department has seen this thing going on, and stands here to-day and claims his private judgment as a defense in the matter.

It will be observed that Mr. Ellis was in office under the act of 1871. It will be observed, talking about the traditions of the department, that the law of 1871, with its power of examinations and the like, had not been in existence two years—less than two years—when Mr. Ellis came into office. Talk about any traditions coming to him! There was no chance for any to arise and none to be considered, if they had arisen. He found that act in existence when he came in, his powers all laid before him in the new act, and he found there what he had to do and what he was put there for, what the motive of the Governor in giving him that honorable position, and what the confidence in him was when it was conferred upon him. It was no light thing to put a man there.

Now, then, he finds himself there. He finds also a passage in the act of 1875 which was passed in his own time. That shows something very singular. It is an unusual passage which is once in a while found in an act, and I ask the learned Senators to observe section 55 of the act of 1875, passed the seventeenth day of May. I will read the whole section.

“This act is hereby declared to be a public act, and shall be construed favorably for every beneficial purpose therein contained.”

Now, an act of this kind, imposing punishments and penalties upon any citizens, would be held to be construed strictly. The court would give the man the benefit of it. That is the rule; but the Legislature did not mean to have any such construction put upon this. They say, “it is to be construed favorably for every beneficial purpose therein contained.” If there is any question about the clause here, that it looks doubtful, take the stronger meaning, to preserve the poor. To the honor of the Legislature that was put in there, and you will not find one statute in five years with a clause of that kind in it. The Legislature inserted this provision that the sacred fund of the poor placed in savings banks, under the watchful eye of the superintendent, shall be entitled to a favorable construction. I think that carries out what I found in the message of the Governor, which I beg to read.

“Savings banks, being intended to induce saving habits among those of small means, by enabling them to obtain interest upon the sums which they can from time to time lay aside from their daily earnings, it is the duty of the Legislature to provide in their charter every possible safeguard for the protection of the depositors. The object kept in view should be security, more than high interest.”

Mr. President, the mismanagement has moved the tears of a great

many people, who have lost their all in a savings bank. In many a house the poor woman lamenting, "the savings of years went in an hour in that miserable Third Avenue Savings Bank." The misery that has been wrought in this State, in thousands of families, has been great, and somebody ought to answer for it ; and it ought to be ascertained here, in this tribunal, whether that department is in the hands of a safe man, though he has committed no crime.

The simple question is, has this office been well administered ? You have from 4,000,000 of people to select a man to fill that office. The incumbent has held this office for four and a half years, one and a half years holding over, and it reminds me of one of General Jackson's wise sayings. He was thrusting out postmasters and collectors all over the country, and some one was appealing to him about it. He replied : " What would you say about the millions that never had an office ? Are not these men as well off as they ? " This is a thing Mr. Ellis has courted by insisting upon holding the office, and putting the State of New York to showing all the reasons why she does not desire him longer to hold it.

Mr. Ellis came into office on the 19th of February, 1873. This act of 1871 was then less than two years in force. There were no traditions ; nothing that could affect his position ; nothing of the kind appeared that shackled him in any way. Now, the examinations had begun in 1871, under a former administration, and ended in 1873. I will ask the Senate to be good enough to take a note of that. That fact appears in Assembly document of 1874, No. 141, page 294, January report of 1874.

Mt. CHAPMAN—That is in the bank report, I suppose.

Mr. TRACY—It was handed in in January or February, 1874, or January, 1874. There were a series of examinations commenced in 1871, and completed in 1873, covering a period of two years, and part of them done under Mr. Ellis, and a part of them under his predecessor, and the first round of examinations was completed in November, 1873, as appears in that general history of the State. Of course in 1873, it will be found that a number of the institutions which are in question here, were examined under Mr. Ellis' directions. Among the earliest, was a regular examination of the Third Avenue Savings Bank. Mr. President, at this point I will ask that the Senate do now adjourn.

Senator ST. JOHN—Mr. President, I wish to ask whether it was the examination of Reid in 1873, or whether it was in the annual report.

Mr. TRACY—Mr. President, the paper to which I referred, was a report showing the first round of examinations of savings banks under the act of 1871, begun in 1871, and ended in 1873. They were men-

tioned in the superintendent's report of 1874. I have not spoken of which one it was.

Senator BRADLEY—Mr. President, it must have been in the report of 1874.

Mr. TRACY—Yes, sir ; that shows there was a round of examinations of these banks, running through a period of two years. A part of them were performed by Mr. Ellis, and part under a former administration.

Senator SCHOONMAKER—Will the counsel please state what the point is, to which our attention is called by this reference.

Mr. TRACY—Mr. President, I mentioned the historical fact that the first course of examinations of two years, ran through 1871 to 1873, a period of two years, and ended during Mr. Ellis' time. It is not an important fact, but I mention it as a part of the case.

Mr. McGUIRE—Mr. President, the respondent will read the whole report to the Senate on his presentation of the case.

The Senate hereupon adjourned to August 14, 1877, at ten A. M.

SARATOGA SPRINGS, *August 14, 1877*—10 A. M.

The Senate met, pursuant to adjournment.

Mr. TRACY, resuming his argument, said : Mr. President, in thinking to make some convenient preparation to facilitate the work of the Senate in dealing with this mass of evidence, we endeavored to prepare a proper brief and print it ; and it will be recognized immediately that, as we had not the testimony printed we had to do it under most unfavorable circumstances, and with many errors which we had to correct, and finally reduce the idea of a brief down to what may be called a chronological index taking up each institution by itself, and stating where certain things were to be found in these two books. For convenience's sake, we call the first book " Committee Testimony " as taken by the committee, and the testimony taken here as " Senate Testimony " and refer to them both by their pages. It is a brief which may serve a convenience as a practical mode of finding things without expressing at large the views and arguments which we desire to present orally.

The particular bank which was first looked into here, though last before the committee, was the Third Avenue Savings Bank. I may say, at the outset, that when this subject was before the committee, at first the committee did not take so full a view, as it did subsequently,

of the range of inquiry which was open to them, and many of the questions put by Mr. McKeon and by Mr. Mack, I think, relating to transactions before the commencement of the year 1875, and to facts of earlier date than that, the committee thought were not proper, and did not allow to be answered. At a later stage of the inquiry, and I mention it now because it was on the Third Avenue Bank case the committee saw occasion to change their ruling in some respects, and allow 'a broader or more open field of inquiry, and so in that case to a considerable extent the thing was looked into clear back to an earlier date, covering the whole period, of the administration of Mr. Ellis. When we arrived here, being called upon to take up all the charges, we found our duties, gentlemen, allow me to say, not at all light, not at all simple, but very heavy, requiring an enormous amount of attention.

It appeared by the examination before the committee on the Third Avenue Bank, that the place to go for all knowledge on this subject was to the Banking Department, and there we went and from thence we have drawn the testimony here, nearly every particle, out of the department itself and out of the acts and testimony of its chosen examiners, Reid and Aldrich. We had nowhere else to go except to the receivers, who had come into the possession of these banks, one after the other, and who were a very worthy, and, as you have seen before you, a very sensible body of men. In short, it became our duty not to surprise anybody, but to go into Mr. Ellis' office, and take down and bring forward here from that source the knowledge which should be laid before the Senate, to enable them to pass upon the question of whether his office had been properly administered, and whether he was the right man to be continued to take charge of the shielding of depositors in savings banks. I will commence immediately upon asking your attention to the first item which is mentioned on this summary as a report by Reid, Aldrich and Vrooman, examiners, April 14, 1873.

## THIRD AVENUE SAVINGS BANK, NEW YORK.

[Examined April 14, 1873, by George W. Reid, Wm. F. Aldrich and Isaac H. Vrooman.]

ASSETS.	Rate of interest.	Amount at par.	MARKET VALUE.		Totals.
			Rate.	Amount.	
Bonds and mortgages.....	7	.....	....	.....	\$264,100 00
Kansas State bonds.....	7	\$175,000 00	100	\$175,000 00	
Louisiana State bonds (levee).....	8	100,000 00	100	100,000 00	
Georgia State bonds.....	7	50,000 00	90	45,000 00	
Alabama State bonds.....	8	68,500 00	84	57,540 00	
Virginia State bonds and coupons.....	6	3,500 00	45	1,575 00	
Jersey City bonds.....	6	43,000 00	95	40,850 00	
Dry Dock, E. Broadway and Battery R. R. bds.....	7	20,000 00	97	19,400 00	
Ninety-two acres of land at Tarrytown, at \$1.500.....	....	.....	....	\$138,000 00	439,365 00
Lots, Fifth avenue, Eighty-fifth and Eighty-sixth streets	....	.....	....	85,000 00	
Five houses, East Forty-sixth street, \$30,000 each, \$150,000; less mortgage, \$50,200.....	....	.....	....	99,800 00	
One house, East Forty-seventh street, \$42,500; less mortgage, \$8,500.....	....	.....	..	34,000 00	
36 East Forty-ninth street, \$42,500; less mortgage, \$14,000.....	....	.....	....	28,500 00	
Banking-house.....	....	.....	....	180 000 00	
House and lot adjoining.....	....	.....	....	20,000 00	
Furniture and fixtures .....	....	.....	....	.....	
					585,300 00
					14,980 80

Cash on hand.....	.....	.....	.....	\$4,478 97	
Cash on deposit in Fifth, National Bank.....	.....	.....	.....	2,652 83	
Cash on deposit in National Park Bank.....	.....	.....	.....	131 30	
Cash on deposit in Murray Hill Bank.....	.....	.....	.....	8,366 59	
Cash on deposit in Manuf. and Builders' Bank.....	.....	.....	.....	9,238 80	24,868 49
Due on mortgage expenses.....	.....	.....	.....	.....	4,181 78
Guarantee fund (individual bond of trustees).....	.....	.....	.....	.....	100,000 00
Rents due.....	.....	.....	.....	.....	650 00
Accrued interest.....	.....	.....	.....	.....	32,776 02
					<u>\$1,466,222 17</u>
LIABILITIES.					
Due depositors.....	.....	.....	.....	1,445,337 51	
Mortgage.....	.....	.....	.....	1,992 00	
Ground rent.....	.....	.....	.....	2,848 00	
Internal revenue.....	.....	.....	.....	779 67	
Accrued interest.....	.....	.....	.....	21,000 00	1,471,957 18
Deficiency of assets.....	.....	.....	.....	.....	<u>\$5,735 01</u>

THIRD AVENUE SAVINGS BANK — (Continued).  
Annual income and charges thereon.

INVESTMENTS.	Rate of interest.	Amount at par.	Revenue.	Totals.
INCOME.				
Bonds and mortgages.....	7	\$264,100 00	\$18,487 00	
Kansas State bonds.....	7	175,000 00	12,250 00	
Louisiana State bonds.....	8	100,000 00	8,000 00	
Georgia State bonds.....	7	50,000 00	3,500 00	
Alabama State bonds.....	8	68,500 00	5,480 00	
Virginia State bonds (interest suspended).....				
Jersey City bonds.....	7	43,000 00	3,010 00	
Dry Dock, East Broadway and Battery R. R. bonds.....	7	20,000 00	1,400 00	
Guarantee fund.....	7	100,000 00	7,000 00	
Guarantee bonds on Tarrytown land.....	7	138,000 00	9,660 00	
Cash in bank.....	4 to 7	20,000 00	1,000 00	
Rents.....			27,460 00	\$97,247 00
CHARGES.				
Interest to depositors.....			\$78,000 00	
Salaries.....			7,300 00	
Internal revenue.....			300 00	
Taxes.....			5,400 00	
Other expenses (estimated).....			2,500 00	93,500 00
Excess of income.....				\$3,747 00



The original report is read in evidence, and is as follows :

BANK DEPARTMENT,  
ALBANY, April 3, 1873. }

Pursuant to the authority conferred, and the duty imposed upon the Superintendent of the Banking Department, by chapter 693, Laws of 1871, I do hereby appoint George W. Reid, Isaac H. Vrooman and W. F. Aldrich to examine into the condition, working and affairs generally of the Third Avenue Savings Bank, New York, and report therein to me in detail as soon as practicable.

Given under my hand and official seal; at Albany, the day and year first above written.

D. C. ELLIS.  
*Superintendent.*

Hon. D. C. ELLIS, *Superintendent Bank Department :*

SIR.—The undersigned, appointed to examine the condition, working, etc., of the Third Avenue Savings Bank of New York, report :

That difficulties having existed for some time among the trustees of this bank, and statements as to its solvency having been repeatedly published in a daily paper, a *run* commenced upon the institution early in January, 1872, which did not cease until, after forty-five days, \$4,500,000 had been drawn out. The courage and perseverance with which the trustees stood up under this pressure and met all demands, and the refusal of the Supreme Court to appoint a receiver, appears to have convinced the remaining depositors that their funds were safe, and since that time the deposits have been steadily increasing.

A large number of the old board of trustees having resigned, the vacancies were filled by gentlemen of wealth and character, who appear determined to sustain the institution, and there is every reason to hope that it will be successful. Their personal obligation for the deficiency of last year is already on file with the department, and they have also agreed to pay to the bank a sufficient amount to cover interest on the unproductive real estate at Tarrytown, and no doubt will make good the small deficiency that now appears in the assets. The estimate of receipts over expenditures for this year is \$3,747.

Your examiners have reason to believe, from dilligent inquiry and personal examination, that that portion of the real estate at Tarrytown is worth fully as much as the officers have estimated it in the assets.

The item of \$4,181.78 in the assets is balance of expenses in the transfer of mortgages to other parties at the request of the mortgagors, and will no doubt all be collected.

Respectfully submitted.

GEO. W. REID.

W. F. ALDRICH.

J. H. VROOMAN.

Since our examination, the troubles in Louisiana have rendered their State bonds unsalable, and, if continued, may cause a heavy loss to the bank.

GEO. W. REID.

*May, 17, 1873.*

I should state here for the information of the Senate, at this stage, that this bank was not a new one, but was incorporated in 1854, chapter 390, by the name of "The Bloomingdale Savings Bank," and it had the clause in it which I quoted yesterday in section 6, as to the use of the money brought into the bank by depositors, that it is to be "invested for the use, interest and advantage of the said depositors and their legal representatives." The name of the bank was changed to the "Third Avenue Savings Bank" in 1859, by chapter 17, merely changing its name. I should observe that, in these cases, the design seemed to have been, for the most part, to give a name descriptive of the localities and some of the changes of name have been merely for that purpose. Now then, we have this report, I will ask you to look on page 354, and hear what these three examiners found in this Third Avenue Savings Bank. There is a line of bonds and mortgages of \$264,100 out of \$1,466,000 of assets, a very small line of mortgages. Then there is a line of bonds consisting of State bonds and a few others amounting to \$499,365. Then comes the real estate held by the bank, not by mortgage but by deed amounting to \$585,300 a very bad looking item to start with. Then, furniture and fixtures \$14,980.88 I would like to know whether any banker—there may be such in this Senate—is not accustomed, in his bank, to have the furniture and fixtures charged over to profit and loss and expense account. The old stuff won't sell, if it is to be converted into money, for a quarter of the price usually paid. Then come the items of money on hand, not an unusual balance, \$24,868.49. Then there was due on mortgage expenses \$4,000 and odd, and then guaranty fund (individual bond of trustees), was \$100,000, rents due, \$650, accrued interest, \$32,766.02, thus making up the whole total. The liabilities were scrutinized by these gentlemen, and after taking

all the liabilities together, and taking all these assets, as they were figured up here, they found there was a deficiency of assets of \$5,735.01. These tables are accompanied by a sort of response to the writ appointing them, a sort of letter, generally attached to it, and there is one in this case. At that time, the Senate will perceive, this bank had a small deficiency on so large a capital, and the deficiency was what remained, after including \$100,000 of those unreliable trustee bonds, and assuming those stocks, the Louisianas, which I find were down at \$100,000, as good at par; and at the same time the want of prosperity in the bank was more apparent from the circumstance that the excess of receipts over expenditures for the year was only about \$3,000, which would never pay a dividend. It would take \$40,000 to \$50,000 to pay a dividend; \$3,000 would make no dividend at all, so that if they went along, they must suspend paying dividends. At that stage, this report comes to this superintendent as a notice to put him on his guard. He is informed that at an earlier day an application has been made to the Supreme Court to appoint a receiver and wind it up. He has produced here in evidence a copy of the Sun newspaper, of the date of January 18, 1871. Recollect, the date when that proceeding was instituted before Judge Barrett.

Mr. McGUIRE — It was in 1872.

Mr. TRACY — Take it as it is. At all events, that was a proceeding that gave him notice that the depositors, or some of the friends of the depositors, were alarmed about the bank, and had proceeded before the court, and that report in the newspapers, you who are gentlemen of the bar, will be curious to look into, and see on what ground that motion failed. It was not a trial. It was a simple motion for a receiver, founded on affidavit, I presume. It is denied by Judge Barrett on two grounds; the one ground is that the plaintiff had no standing there, if he had not called for his money. That was enough. But Judge Barrett went further, and said on the papers, as they stood before him, he could not hold the bank was insolvent. That motion was denied just there; but, gentlemen, all understand perfectly well that a motion for injunction, whether granted or refused, does not work a final determination of the rights of the case. It merely shows what may be said on the one side or the other. If these gentlemen had made a report, as they had on the 1st of January, 1872, and verified it, making some kind of a surplus and a good showing, when they were all before Judge Barrett on this order, they would there swear to some of the things again; and, as it does not appear what they relied upon, they may have depended upon their mere report of the first day of January previous, showing their condition. The motion died there, and what became of the case we do not know. It was not a proceeding coming from the bank department, nor the

Attorney-General. The department was not in it; the superintendent was not there; it was before Mr. Ellis' time, but it came in as a part of the things to show that this bank, which had once been depleted by \$4,500,000 on a run of forty-five days, had left a small line of bonds and mortgages, an enormous line of bonds and a great quantity of trustees' obligations, such as they were, had been suspected and impeached in an irregular manner before Judge Barrett.

Before the committee Mr. Ellis produced Mr. John A. Stewart as a witness, and I beg now to call attention to a passage in his testimony contained in the committee's testimony, page 438. He was interrogated by Senator St. John in reference to this identical report: "By Senator St. John: Q. You have a general knowledge? A. I have a general knowledge; it is impossible, looking at a report retrospectively, to say what a man would have done under the circumstances; but with the light which I now have, with this report in my hand, I should say that it would be the duty of the superintendent to close it up; I see assets here that I think comparatively worthless."

Here is an acknowledged great man in these things, Mr. Stewart, brought forward here to be examined as a witness with a view to certain other points, and he says, "with the light which I now have, with this report in my hand" (which Mr. Ellis had in his hand when he came to him), "I should say that it would be the duty of the superintendent to close it up; I see assets here that I think comparatively worthless."

It will be seen on page 437 that he had had this report in his hand, and had been examining it, looking at the securities. "I show you the report of the examiners of April 14, 1873, and the report of the examiners of March 22, 1875," so that his attention was called to it fully. Senators will be good enough to take up the other book at page 17 and look at the next item.

*Report of the Third Avenue Savings Bank, an incorporated institution for savings, of its condition on the 1st day of July, 1873, made to the Superintendent of the Banking Department, as required by chapter 136 of the Laws of 1857 :*

## RESOURCES.

1. Bonds and mortgages, as per Schedule A, hereto annexed.....	\$274,100 00
2. Stock investments, as per Schedule B, hereto annexed, cost.....	397,361 87
3. Real estate, banking buildings, covering two lots, Third avenue and twenty-sixth street, cost.....	166,651 96
4. Real estate, nine (9) houses and lots, New York city, cost and market value, interest paying....	275,000 00
5. Real estate, at Tarrytown, Westchester county, N. Y., cost seven per cent, interest guaranteed.	138,000 00
6. Individual bonds bearing seven per cent interest..	100,000 00
7. Furniture and fixtures.....	15,033 63
8. Cash on deposit in banks or trust companies, as per Schedule F, hereto annexed.....	36,997 82
9. Cash on hand not deposited in bank.....	21,042 91
10. Amount of assets not included under either of the above heads, the particular items of which are set forth in Schedule G, hereto annexed.....	88,441 78
	<hr/>
	\$1,512,629 96
	<hr/>

## LIABILITIES.

1. Amount due depositors :	
Principal.....	\$1,465,041 97
Interest credited for the 1st of July, 1873.....	40,376 61
	<hr/>
	\$1,505,418 58
3. Excess of assets over liabilities.....	7,211 38
	<hr/>
	\$1,512,629 96
	<hr/>

STATE OF NEW YORK, }  
COUNTY OF NEW YORK. } ss. :

Thompson W. Decker, president, and David Morgan, secretary, of the Third Avenue Savings Bank, an incorporated institution for savings, located and doing business at Third avenue, corner Twenty-sixth street, in the city of New York, being duly and severally sworn, each for himself, saith that the foregoing report and the schedules accompanying the same are, in all respects, a true statement of the condition of the said institution before the transaction of any business on the morning of the first day of July, one thousand eight hundred and seventy-three, in respect to each and every of the items and particulars above specified, according to the best of his knowledge and belief.

T. W. DECKER,  
*President.*  
DAVID MORGAN,  
*Secretary.*

Severally subscribed and sworn by both }  
deponents the 22d day of July, 1873, }  
before me.

HENRY C. WEEKS,  
*Notary Public (50), New York County.*

At the top of the sixteenth page you will see they make a surplus of \$7,200 and odd dollars. The practice of the witness was methodical in this respect, that there was a head clerk, and a chief clerk, and it was his or some other clerk's particular duty and his vocation to, among other things, scrutinize the reports as they were brought in, examine them and present his notes and suggestions about them to the superintendent, and that was done in this case by Mr. Smith, whom you have seen here, a very astute accountant, and doing things with great care.

At pages 103 and 108 are Mr. Smith's words. There are the tabulations in full, worked out, each of these articles at its current price and its value taking any one of them, the real estate or some of the things at the rate the examiners had put them, the previous examiners, and the others taken at the market rate ; you will see at page 104, the following :

NOTE.—That in pencil mark was as follows : “ The item \$608,033.63 exceeds the value of the same property, as stated January 1, 1873, \$32,752.75. Add difference between surplus, January 1, 1873, and

July 1, 1873, as shown by reports of the bank, \$8,448.37, and there appears to have been a real loss during the six months ended July 1, 1873, of \$41,201.12. To this sum add depreciation of stocks, September, 1873, \$70,250, and the total loss appears to be \$111,451.12."

By this correction there was a loss and deficit, and he goes on to review the statement, and put it on another basis, which was as follows :

STATEMENT of condition of Third Avenue Savings Bank, July 1, 1873, value of real estate allowed, as shown by report of Examiner Keyes, 1871, and value of stocks at their quoted market value, September, 1873.

	Rate of interest.	Par.	Rate. Market value.	Market value.	Totals.
<b>RESOURCES.</b>					
Bonds and mortgages.....	....	.....	....	.....	\$274,100 00
<b>STOCK INVESTMENTS.</b>					
Louisiana State.....	8	\$100,000 00	55	\$55,000 00	
Georgia State.....	7	50,000 00	89	44,500 00	
Alabama State.....	8	68,500 00	*80	54,800 00	
Kansas State.....	7	155,000 00	....	155,000 00	
Virginia State.....	6	3,500 00	50	1,750 00	
Jersey City.....	6	43,000 00	90	38,700 00	
Dry Dock, E. B'way and Battery R. R. Co. bonds...	7.	20,000 00	....	20,000 00	369,750 00
<b>REAL ESTATE.</b>					
Bank buildings.....	....	14,980 88	....	.....	
Furniture and fixtures.....	....	180,000 00	....	\$150,000 00	
Lot adjoining.....	....	20,000 00	....	10,000 00	
Tarrytown property.....	....	138,000 00	....	100,000 00	
Fifth avenue property.....	....	247,300 00	....	185,000 00	445,000 00
Cash in bank.....	....	.....	....	.....	36,997 82
Cash on hand.....	....	.....	....	.....	21,042 91

\*Asked.



Individual bonds of trustees.....	.....	.....	.....	.....	100,000 00
Other assets, items not reported .....	.....	.....	.....	.....	32,455 60
<b>LIABILITIES.</b>					
Due depositors.....	.....	.....	.....	.....	\$1,279,346 33
Deficiency .....	.....	.....	.....	.....	1,505,418 58
					<u>\$226,072 25</u>

We will take the next one, which was as follows :

STATEMENT of condition of Third Avenue Savings Bank, July 1, 1873, value of real estate allowed, as shown by report of examiners, April 14, 1871, and value of stocks at their quoted market value, September, 1873.

	Rate of interest.	Par.	Rate, Market value.	Market value.	Totals.
<b>RESOURCES.</b>					
Bonds and mortgages.....	....	.....	....	.....	\$274,100 00
<b>STOCK INVESTMENTS.</b>					
Louisiana State.....	8	\$100,000 00	55	\$55,000 00	
Georgia State.....	7	50,000 00	89	44,500 00	
Alabama State.....	8	68,500 00	*80	54,800 00	
Kansas State.....	7	155,000 00	....	155,000 00	
Virginia State.....	6	3,500 00	50	1,750 00	
Jersey City.....	6	43,000 00	90	38,700 00	
Dry Dock, E. B'way and Battery R. R. Co. Bonds...	7	20,000 00	....	20,000 00	369,750 00
<b>REAL ESTATE.</b>					
Banking building.....	....	180,000 00	....	.....	
House and lot adjoining.....	....	20,000 00	....	.....	
Furniture and fixtures.....	....	14,980 88	....	.....	
Nine houses and lots.....	....	.....	....	\$214,980 88	600,280 88
Tarrytown property — ninety-two acres.....	....	.....	....	247,300 00	36,997 82
Cash in bank.....	....	.....	....	138,000 00	21,042 91
Cash on hand.....	....	.....	....	.....	

\*Asked.



That makes a deficiency of \$70,791.37, so that in either way, by going back to the price not fixed by the bank for any of these purposes, but taking the market price of stocks either taking the appraisal put upon them in April, or the year before, there was a deficiency and not a surplus. I will read from page 109 of his testimony as follows :

“Q. The document which you have now read, containing three pages was prepared by you? A. Yes, sir.

Q. The first page of it in ink that you read, exhibits the securities of the bank on the first of July as made by itself? A. Yes, sir.

Q. And the second page is a re-examination of that year, changing certain values according to the stock valuation for the time? A. Yes, sir.

Q. How was the third one? A. The third one was the same; I believe you will find the only change in that is in the real estate.

Q. On what basis did you change the real estate between the two? A. One shows that it was from the examiner's report of 1873, in April, I believe—and the other was Mr. Keyes' examination in 1871.

Q. That makes the difference between the two; the second and third report? A. Yes, sir.

Q. By each of them you made out the deficiency \$226,000 and \$70,000 and odd on the other? A. Yes, sir; I would like to state, though, there may have been some changes in those assets in those times that I would not have found here; I had simply to take the report of July, and assume they had the same real estate shown previously; that will be found on pages 473 and 474.

Q. You presented this paper to him, and talked it over with him? A. Yes, sir.

Q. Was there any thing said about closing the bank at that time? A. No; I don't recollect that there was any thing said at that time.

Q. Any thing said about its being insolvent? A. I don't think that is necessary, so I don't think any thing was said about it.

A. After this interview was any thing done about that bank in the department? A. I believe there was nothing done.

Q. Was there any special examination ordered after that? A. Not that I ever heard of.

Q. When next was it examined? A. I think the next examination occurred in 1875.

Q. That was the regular examination, once in two years? A. Yes, sir.

Q. The regular examination was the next one? A. Yes, sir.

Q. Nothing was done that winter? A. I believe not; the records will show.”

Now, at this stage, you have Mr. Ellis coming into office and finding a bank that had already been complained of, been very much behind, having \$4,500,000 of deposits drawn out, finding it with a little

balance, claiming a surplus of \$7,000 shortly after having it examined by these three examiners, and found it to be in a very bad condition. Indeed, shortly afterwards, the report of July first coming in, in which they still claimed the surplus, which should have excited his suspicions under the circumstances, and he puts it through the process of having it scrutinized; yet the whole work was before him showing it was unsound; and he did not use any of these beneficial powers conferred upon him by the Legislature to require a thorough examination. He did not do any thing. He did not issue his order under his hand and seal, but let it go on. We will follow it down to the next stage. There is no question about the fact that Mr. Ellis had these tabulations; for it seems that when Mr. McDonald was examined before the committee, he said that all the tabulations for the whole period were handed to him for examination by Mr. Ellis. He was an expert called in to examine some things.

The next period follows, the bank going on undisturbed, the watchman being asleep, and the poor depositors supposing that the State of New York was taking care of them by a competent, proper and vigilant man, placing their savings there; and the first of January comes around and another report shows a surplus of assets. These banks always have a surplus when they report themselves. I refer to the Senate testimony, page 17, now.

*Report of the Third Avenue Savings Bank, an incorporated institution for savings, of its condition on the 1st day of January, 1874, made to the Superintendent of the Banking Department, as required by chapter 136 of the Laws of 1857.*

## FINANCIAL.

### RESOURCES.

1. Bonds and mortgages, as per Schedule A, hereto annexed.....	\$272,400 00
2. Stock investments, as per Schedule B, hereto annexed.....	397,361 87
3. Real estate, bank buildings covering two (2) lots, Third avenue and Twenty-sixth street, cost..	166,651 95
Real estate, nine (9) houses and lots, New York city, cost, market value, interest paying.....	275,000 00
Real estate at Tarrytown, Westchester county, N. Y., cost and market value.....	138,000 00
4. Individual bonds of trustees, bearing seven (7) per cent interest.....	115,000 00
5. Furniture and fixtures.....	15,033 63

6. Cash on deposit in banks or trust companies, as per Schedule F, hereto annexed.....	\$21,886 75
7. Cash on hand not deposited in bank.....	28,987 72
8. Amount of assets not included under either of the above heads, the particular items of which are set forth in Schedule G, hereto annexed.....	96,120 49
Total.....	<u>\$1,526,442 41</u>

## LIABILITIES.

1. Amount due depositors, viz. :	
Principal.....	\$1,430,610 66
Interest credited for the 1st of January, 1874.....	42,129 39
	<u>\$1,472,740 05</u>
2. Other liabilities, viz. :	
Demand loan on bonds.....	46,000 00
Internal revenue tax.....	728 69
3. Excess of assets over liabilities.....	6,973 67
Total.....	<u>\$1,526,442 41</u>

## STATISTICAL.

1. Number of open accounts on the morning of January 1, 1874.....	8,301
2. Number of accounts opened during the year 1873.....	1,731
3. Number of accounts closed during the year 1873..	2,124
4. Number of accounts opened since organization....	59,703
5. Amount deposited not including interest credited during 1873.....	\$789,413 21
6. Amount deposited, including interest credited, for the same period.....	868,959 80
7. Amount withdrawn during the year 1873.....	835,011 04
8. Amount of interest or profits earned during the year 1873.....	114,468 78
9. Amount of interest credited to depositors for the same period.....	79,546 59
10. Amount of each semi-annual credit of interest for the year 1873, and when credited : January 1, 1873, \$39,169.98 ; July 1, 1873, \$40,376.61 ; credited at other periods during the year....	None
11. Rate per cent of dividends or interest to depositors during the past year six (6) per cent on sums up to \$5,000, five (5) per cent on sums above.	

STATE OF NEW YORK, }  
COUNTY OF NEW YORK. } ss. :

Thompson W. Decker, president, and David Morgan, secretary of the Third Avenue Savings Bank, an incorporated institution for savings, located and doing business at Third avenue, corner of Twenty-sixth street, in the city of New York, being duly and severally sworn each for himself saith that the foregoing report and the schedules accompanying the same are, in all respects, a true statement of the condition of said institution before the transaction of any business on the morning of the 1st day of January, 1874, in respect to each and every of the items and particulars therein specified, according to the best of his knowledge and belief.

T. W. DECKER,  
*President.*  
DAVID MORGAN,  
*Secretary.*

Severally subscribed and sworn by both }  
deponents the 26th day of January, }  
1874, before me.

HENRY C. WEEKS,  
*Notary Public (50), New York County.*

I call attention to the fact that the report shows a surplus of \$6,973.67 on obligations of \$1,500,000. Pretty close to the wind for any institution that called itself good! It was about the same figure they had been proclaiming before the scrutiny which showed it was insolvent and unsafe. I now call your attention to the report on pages 19, 20, 21 and 22, of the Senate testimony.

*Report of the Third Avenue Savings Bank, an incorporated institution for savings, of its condition on the 1st day of July, 1874, made to the Superintendent of the Banking Department, as required by chapter 136 of the Laws of 1857.*

## RESOURCES.

1. Bonds and mortgages, as per Schedule A, hereto annexed.....	\$272,400 00
2. Stock investments as per Schedule B, hereto annexed.....	369,964 87
3. Real estate, bank building covering two (2) lots, Third avenue and Twenty-sixth street,*cost...	166,651 95
Real estate, nine (9) houses and lots, New York city, cost and market value, estimated interest paying .....	275,000 00
Real estate, 92 acres of land, Tarrytown, Westchester county, N. Y., cost.....	138,000 00
4. Individual bonds of trustees, bearing 7 per cent interest .....	115,000 00
5. Furniture and fixtures.....	15,033 63
6. Cash on deposit in banks or trust companies, as per Schedule F, hereto annexed.....	39,243 92
7. Cash on hand not deposited in bank.....	20,707 25
8. Amount of assets not included under either of the above heads the particular items of which are set forth in Schedule G, hereto annexed.....	128,170 45
	<hr/>
	\$1,540,172 07
	<hr/>

## LIABILITIES.

1. Amount due depositors:	
Principal .....	\$1,436,819 48
Interest credited for the 1st of July, 1874.....	40,472 18
	<hr/>
	\$1,477,291 66
2. Other liabilities, viz.:	
Demand loan on bonds .....	45,000 00
Internal revenue tax.....	649 36
3. Excess of assets over liabilities .....	17,231 05
	<hr/>
	\$1,540,172 07
	<hr/>



STATE OF NEW YORK, }  
COUNTY OF NEW YORK. } ss. :

I, Daniel Bates, vice-president, and David Morgan, secretary of the Third Avenue Savings Bank, an incorporated institution for savings, located and doing business at No. 354 Third avenue, corner Twenty-sixth street, in New York, being duly and severally sworn, each for himself saith, that the foregoing report and the schedule accompanying the same are, in all respects, a true statement of the condition of the said institution before the transaction of any business on the morning of the 1st day of July, 1874, in respect to each and every of the items and particulars above specified, according to the best of his knowledge and belief.

DANIEL BATES,

*Vice-President.*

DAVID MORGAN,

*Secretary.*

Severally subscribed and sworn by both }  
deponents the 24th day of July, 1874, }  
before me.

LUTHER WISE,

*Commissioner of Deeds in and for New York Co.*

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*Report of the Third Avenue Savings Bank, an incorporated institution for savings, of its condition on the 1st day of January, 1875, made to the Superintendent of the Banking Department, as required by chapter 136 of the Laws of 1857.*

#### RESOURCES.

1. Bonds and mortgages, as per Schedule A, hereto annexed .....	\$269,850 00
2. Stock investments, as per Schedule B, hereto annexed .....	361,214 87
3. Real estate, bank buildings, covering two lots, Third avenue and Twenty-sixth street, cost..	171,948 65
Real estate, nine houses and lots, New York city, cost and market value.....	288,618 51
Real estate, 92 acres of land at Tarrytown, Westchester county, New York, cost.....	138,000 00
4. Individual bonds of trustees, bearing seven per cent interest.....	115,000 00
5. Furniture and fixtures.....	15,033 63

6. Cash on deposit in banks or trust companies, as per Schedule F, hereto annexed.....	\$16,010 10
7. Cash on hand not deposited in bank.....	11,914 21
8. Amount of assets not included under either of the above heads, the particular items of which are set forth in Schedule G, hereto annexed.....	139,329 05
	<hr/> \$1,526,919 02 <hr/>

## LIABILITIES.

1. Amount due depositors :	
Principal .....	\$1,413,931 53
Interest credited for the 1st of January, 1875.....	41,026 84
	<hr/> \$1,454,958 37
2. Other liabilities, viz. :	
Demand loan on bonds.....	65,000 00
3. Excess of assets over liabilities....	6,960 65
	<hr/> \$1,526,919 02 <hr/>

## STATISTICAL.

1. Number of open accounts on the morning of January 1, 1875.....	\$8,117 00
2. Number of accounts opened during the year 1874,	1,562 00
3. Number of accounts closed during the year 1874,	1,746 00
4. Number of accounts opened since organization..	61,244 00
5. Amount deposited, not including interest credited during 1874.....	680,296 89
6. Amount deposited, including interest credited for the same period.....	762,898 46
7. Amount withdrawn during the year 1874.....	779,577 59
8. Amount of interest or profits received or earned during the year 1874.....	108,339 77
9. Amount of interest credited to depositors for the same period.....	82,601 57
10. Amount of each semi-annual credit of interest, for the year 1874, and when credited: January 1, 1874, \$42,129.39; July 1, 1874, \$40,472.18. Credited at other periods during the year,	None.
11. Rate per cent of dividends or interest to depositors during the past year, six per cent from one dollar to \$5,000; five per cent above \$5,000.	

STATE OF NEW YORK, }  
COUNTY OF NEW YORK. } ss.:

John H. Lyon, president, and William S. Carman, secretary, of the Third Avenue Savings Bank, an incorporated institution for savings, located and doing business at Third avenue, corner Twenty-sixth street, in city of New York, being duly and severally sworn, each for himself, saith, that the foregoing report and the schedules accompanying the same are, [in all respects a true statement of the condition of said institution before the transaction of any business on the morning of the first day of January, one thousand eight hundred and seventy-five, in respect to each and every of the items and particulars therein specified, according to the best of his knowledge and belief.

JOHN H. LYON,  
*President.*

W. S. CARMAN,  
*Secretary.*

Severally subscribed and sworn by both }  
deponents, the 23d day of January, }  
1875, before me.

GEO. HILL,  
*Commissioner of Deeds.*

The superintendent kept right on all this time, with all these cautions before him, and did nothing. Any citizen of the city of Albany, attending to his own affairs, and thinking nothing about the Bank Department, would have been serving the State as much as he was, in respect to the duty of looking after the savings bank. The poor people were making their deposits in the confidence that these banks were carefully watched over by a man selected to protect them. They could not inquire themselves; they could not know; they must trust to the vigilance and watchfulness of the superintendent.

That report is conceded pretty generally to have been false — a false and fraudulent report. Lyon was one of the men who swore to it. He was the president of the bank. I refer to his testimony on page 424 of the committee's testimony, which is as follows:

"Q. Were you the former President of the Third Avenue Savings Bank in this city? A. I was the former president from 1871 to 1872.

Q. Were you the president on January 1, 1875? A. They re-elected me, but I never accepted only by signing a single document, which made me virtually president.

Q. What document was that? A. It was a statement.

Q. Will you please look at the statement on page 168 of the annual report of the Superintendent to Banking Department for 1875, and say whether that is the statement that you refer to [handing witness a book] ? A. As I never saw the statement but once, when it was brought to my office, I could not positively swear it is the one.

Q. You have no doubt it is ? A. I have no doubt it is ; is was brought to me and I signed it, and I supposed it was all right.

Q. Did it show any excess of assets over liabilities ? A. Yes, sir ; a small amount.

Q. About \$6,960.65 ? A. Yes, sir.

Q. Were you then engaged actively, acting as the president of the bank ? A. No, sir ; I never signed any official document only that.

Q. When did you cease taking an active part ? A. March 19, 1872.

Q. Do you know who prepared this statement ? A. I do not.

Q. Who brought it to you to sign ? A. Mr. Carman.

Q. William S. Carman, who was then acting as secretary ? A. I think that is his name ; at that time I was not personally acquainted with him.

Q. Were you personally aware at that time of the condition of this bank ? A. I was not.

Q. Then you had not yourself personally made an examination of this bank ? A. Not since 1872.

Q. And you did only what you thought was proper for you to do, being an officer of the bank, to sign them, inasmuch as it had been brought to you by the secretary ? A. I asked the question if the thing was all right, and he said he could afford to sign it, and I thought I could."

That was the kind of administration that was going on under this reign of peace, the department disturbed nobody, instead of watching everybody and everything. Now we come down to the next stage in this matter in which by the course of time it became incumbent upon the superintendent to make an examination ; not exercising his option of doing it. It got around to a regular examination in 1875 ; the two years coming around, March, 1873 to March, 1875. He had to have an examination, it was not his diligence in any form. He appointed his examiners—I now refer to the examination of the Third Avenue Savings Bank of the date of March 22d and 23d 1875, by Reid and Aldrich, which I read from page 23, and forward, as follows :

## THIRD AVENUE SAVINGS BANK, NEW YORK CITY.

[Examined March 22 and 23, 1865, by George W. Reed and Wm. F. Aldrich.]

ASSETS.	Rate of interest.	Amount at par.	MARKET VALUE.		Totals.
			Rate.	Amount.	
Bonds and mortgages.....	7	.....	....	.....	\$264,900 00
Kansas State bonds.....	7	\$25,000 00	100	\$25,000 000	
Georgia State bonds.....	7	50,000 00	95	47,500 00	
Louisiana State bonds (levee).....	8	100,000 00	27	27,000 00	
Alabama State bonds.....	8	68,500 00	42	28,770 00	
Tennessee State bonds (funding).....	6	55,000 00	48	26,400 00	
Virginia State bonds.....	6	2,000 00	32	640 00	
Jersey City bonds.....	6	43,000 00	95	40,850 00	
Dry Dock, East Broadway and Battery R. R. bonds..	7	10 000 00	100	10,000 00	
Ninety-two acres of land at Tarrytown, \$1,500.....	.....	.....	.....	\$138,000 00	206,160 00
Five houses, East Forty-sixth street (\$30,000), \$150,-	.....	.....	.....	107,500 00	
000; less mortgage, \$42,500.....	.....	.....	.....	85,000 00	
House, Fifth avenue and Eighty-fifth street.....	.....	.....	.....	.....	
House, East Forty-seventh street, \$42,500; less mort-	.....	.....	.....	.....	
gage, \$8,500.....	.....	.....	.....	34,000 00	
House, 36 East Forty-ninth street, \$42,500; less mort-	.....	.....	.....	.....	
gage, \$14,000.....	.....	.....	.....	28,500 00	
Banking-house, Third avenue and Twenty-sixth street	.....	.....	.....	180,000 00	
House and lot adjoining.....	.....	.....	.....	20,000 00	
					593,000 00

## THIRD AVENUE SAVINGS BANK—(Continued).

ASSETS.	Rate of interest.	Amount at par.	MARKET VALUE.		Totals.
			Rate.	Amount.	
Furniture and fixtures.....	....	.....	....	.....	\$15,000 00
Due from former counsel for bond and mortgage collected	....	.....	....	.....	2,000 00
Cash in vault.....	....	.....	....	.....	
Cash in Fifth National Bank.....	4	.....	....	\$3,520 51	
Cash in Murray Hill Bank.....	4	.....	....	1,885 57	
		.....	....	2,000 00	
Guarantee fund (individual bond of trustees).....	....	.....	....	.....	7,406 08
Interest accrued.....	....	.....	....	.....	115,000 00
Deficiency of assets.....	....	.....	....	.....	20,420 00
		.....	....	.....	219,226 81
LIABILITIES.					
Due depositors.....	....	.....	....	\$1,414,892 89	\$1,443,112 89
Interest accrued.....	....	.....	....	18,000 00	
Due Fifth National Bank.....	....	.....	....	8,000 00	
Ground rent and interest on mortgage.....	....	.....	....	2,220 00	
		.....	....	.....	1,443,112 89

# ANNUAL INCOME AND CHARGES THEREON.

INVESTMENTS, ETC.	Rate of interest.	Amount at par.	Revenue.	Total.
INCOME.				
Bond and Mortgages .....	7	\$266,900 00	\$18,683 00	
State bonds .....	7	75,000 00	5,250 00	
Jersey City bonds .....	6	43,000 00	2,580 00	
City railroad bonds .....	7	10,000 09	700 00	
Cash in bank .....	4	4,000 00	160 00	
Rents .....	...	.....	22,720 00	\$50,093 00
CHARGES.				
Interest to depositors .....	...	.....	\$82,000 00	
Salaries .....	...	.....	4,340 00	
Internal revenue tax .....	...	.....	1,300 00	
Other taxes .....	...	.....	6,244 00	
All other charges .....	...	.....	1,000 00	94,884 00
Deficiency of income .....	...	.....	.....	\$44,791 00

After estimating the assets at their full market value, there is a deficiency of \$319,000 besides the trustees' guarantee bond of \$115,000 held by the department. The annual deficiency of income is nearly \$45,000, accounted for in part, by the large amount of State bonds on which the interest has been suspended, and the small income from the real estate.

The following is a copy of the written report :

“ BANK DEPARTMENT,  
STATE OF NEW YORK. } ”

Pursuant to the authority conferred and the duty imposed upon the Superintendent of the Banking Department by chapter 693 of the Laws of 1871, I do hereby appoint George W. Reid and William F. Aldrich to examine into the condition, working and affairs generally of the Third Avenue Savings Bank, New York city, and report thereon to me in detail, as soon as practicable.

Given under my hand and official seal at Albany, this 15th day of March, 1875.

D. C. ELLIS,  
*Superintendent.*

Hon. D. C. ELLIS, *Superintendent Bank Department :*

SIR.—The undersigned, appointed to examine into the condition, working, etc., of the Third Avenue Savings Bank, report :

It will be seen from the schedules annexed that after estimating the assets at full market value there is a deficiency of \$219,000, besides the trustees' guarantee bonds of \$115,000 held by the department.

The annual deficiency of income is nearly \$45,000, accounted for in part by the large amount of State bonds on which the interest has been suspended, and the small income from the real estate.

Respectfully submitted.

GEO. W. REID.  
W. F. ALDRICH.”

Examined March 22 and 23, by G. W. Reid and W. F. Aldrich.

Any man of ordinary vigilance in this department could not have been surprised at that. It was the natural fruit of his own inaction for a year. He should have been after these people with his examiners constantly, and found out about their condition, and trained them in the way they should go, by having them stopped entirely, or proceeded against to restrain them wasting the people's money ; but he let them go on, taking the reports as they came in, as authentic facts, against his own examiners, and at the end of the year in comes this clap of thunder ; but nothing would wake him up. Did this startle him ? We will see how he behaved after reading this report.

Now, the same line of securities are in this bank that were in there before, the same real estate. The property had not changed materially ; they were constantly falsifying the truth. There were some



bonds. We come to the consideration of trustees' bonds ; they are given in the book here as put in evidence before the Senate. There are some of the forms of the bonds in this bank ; they are sometimes called the "trustees' bonds" and sometimes "trustees' obligations ;" they are variously named, but in all of them it is never an absolute promise to pay so much money, like a simple bond or note, but it is a promise to pay so much money as the bank should ultimately come short, to pay it on six months' notice, or by the year 1881, if the bank should ultimately come short, looking forward to a future when it should collapse, and being made by the trustees who had an interest in never having them fall due. Their policy was to keep the bank going, and every one of these bonds signed by the trustees was a pledge to make him a dishonest trustee, if he was capable of it, and keep the bank afloat as long as he could, and postpone the day of the obligation and do the best he could when the bank should finally collapse. They were bonds made by the trustees, payable at the option of the bank ; the trustees were the bank ; they managed it ; they were to abide their own time. It was not an obligation to make a gift, but an obligation to provide a gift, in a certain emergency in the future. Now, would any financier around this body give fifty cents on a dollar for any bond like that ? Who would bid for it ? Would anybody bid ten cents ? They are no cash securities ; they are not bonds and mortgages, not like State, county or city bonds, as securities belonging to a savings bank. There is no investment of the money of the poor people in any sort of obligation ; but it is a merely outside guaranty that by and by the bank should have a part of its loss made good. One peculiarity about these bonds, in several of these cases, is that they keep increasing all the while. It is like a man drinking, who wants to increase the quantity, and his appetite is greater and greater. The amount of the trustees' bonds, the trustees made come out to a dollar and cent, so as to make the assets balance the liabilities, and so in three successive reports they raised about \$1,600 every time on the figures necessary to make the balance on the whole amount ; and, put together, it was on its face the most apparent sham and unreal thing. These bonds may be found at pages 239 and 241 of the Senate testimony, and read as follows :

" Know all men by these presents that we, William A. Darling, John H. Lyon, Daniel Bates, W. D. Bruns, William B. Harrison, James Stephens, Andrew Stevens, James Owens, Richard Kelly, D. D. T. Marshall, David Morgan, George Hencken, Jr., Thompson W. Decker, William S. Opdyke and John Lacey, in consideration that the Third Avenue Savings Bank of the city of New York, upon the request of each of us hereby made, does continue its ordinary business after the

15th day of January, 1873, and in further consideration of the mutual covenants hereof do hereby agree with each other to bind ourselves respectively, and are hereby severally bound, each for himself, his respective heirs, executors and administrators, and not one for the other, to pay unto the said the Third Avenue Savings Bank of the city of New York, its successors or assigns, on the first day of January, in the year one thousand eight hundred and eighty-three (1883), or six months after a demand therefor, the following sums respectively, viz.: The said William A. Darling the sum of fifteen thousand dollars (\$15,000); the said John H. Lyon the sum of five thousand dollars (\$5,000); the said Daniel Bates the sum of ten thousand dollars (\$10,000); the said W. D. Bruns the sum of ten thousand dollars (\$10,000); the said William B. Harrison the sum of ten thousand dollars (\$10,000); the said James Stephens the sum of ten thousand dollars (\$10,000); the said Andrew Stevens the sum of ten thousand dollars (\$10,000); the said James Owens the sum of five thousand dollars (\$5,000); the said Richard Kelly the sum of ten thousand dollars (\$10,000); the said D. D. T. Marshall the sum of twenty-five hundred dollars (\$2,500); the said David Morgan, George Hencken, Jr., Thompson W. Decker, William S. Opdyke, each the sum of twenty-five hundred dollars (\$2,500); and the said John Lacey the sum of twenty-five hundred dollars (\$2,500), with interest in each case on the said amounts respectively from the 1st day of January, 1873, at the rate of seven per centum per annum, payable on the first days of January and July in each year, until the principal sums are paid or discharged.

And it is expressly agreed by and between the parties hereto, that the payments made on account of either the principal or interest of bond shall not be claims against the said savings bank, nor constitute a debt of the said savings bank, except, however, that all payments so made shall be returned with interest by the said savings bank, pro rata, out of any actual surplus acquired by it, exceeding the sum of \$100,000, such payments to be made by the said savings bank, pro rata, until the whole amounts paid hereunder shall be returned with interest.

And the said Third Avenue Savings Bank does receive this bond upon the terms herein expressed, and further agrees that whenever an actual surplus exceeding the amount of \$50,000 shall have been acquired by it, then the rate of interest upon the several sums secured by this bond shall be reduced to such extent as shall not impair such surplus, and that proportionate interest shall be allowed and paid by it upon all sums of money actually paid on account of the principal sums secured thereby.

And the said savings bank does further agree that whenever the actual surplus acquired by it shall amount to the sum of \$10,000, exclusive of this bond, then this bond shall be discharged and the several obligors thereof be forever released therefrom.

In witness whereof we have hereunto set our respective hands and seals, and the said savings bank has hereunto affixed its corporate seal and caused these presents to be attested by its officers this twenty-eighth day of December, in the year one thousand eight hundred and seventy-two.

WM. A. DARLING.	[L. s.]	RICHARD KELLY.	[L. s.]
JOHN H. LYON.	[L. s.]	D. D. T. MARSHALL.	[L. s.]
DANIEL BATES.	[L. s.]	DANIEL MORGAN.	[L. s.]
WM. D. BRUNS.	[L. s.]	GEO. HENCKEN, JR.	[L. s.]
W. B. HARISON.	[L. s.]	T. W. DECKER.	[L. s.]
JAS. STEPHENS.	[L. s.]	WM. S. OPDYKE.	[L. s.]
ANDREW STEVENS.	[L. s.]	JOHN LACEY.	[L. s.]
JAMES OWENS.	[L. s.]		

In the presence of [the word "severally" }  
interlined on the eighteenth line of the }  
first page before execution].

HENRY C. WEEKS.

STATE OF NEW YORK, }  
CITY AND COUNTY OF NEW YORK. } ss. :

On the 28th day of December, 1872, personally appeared before me W. A. Darling, Daniel Bates, Wm. D. Bruns, Wm. B. Harison, James Stephens, Andrew Stevens, James Owens, David Morgan, Geo. Hencken, Jr., T. W. Decker and W. S. Opdyke; and also on the 30th day of December, 1872, personally appeared before me John H. Lyon, Richard Kelly, John Lacy and D. D. T. Marshal, known to me to be the individuals described in and who executed the foregoing instrument, and severally acknowledged that they executed the same for the purposes therein contained.

HENRY C. WEEKS,  
*Notary Public.*

DANIEL BATES,  
*Vice-Pres't.*

[Bank Seal.]

DAVID MORGAN,  
*Secretary*

STATE OF NEW YORK,        }  
CITY AND COUNTY OF NEW YORK. } ss. :

On the 30th day of December, 1872, before me came David Morgan with whom I am personally acquainted, who being by me duly sworn, did depose and say that he resides in the city of New York ; that he is the secretary of the Third Avenue Savings Bank, to him known to be the same corporation described in and which executed the foregoing instrument ; that the seal affixed to said instrument is the corporate seal of said corporation, and was affixed thereto by its authority, and that he is the secretary, and Daniel Bates, its vice-president, subscribed their names thereto by like authority.

HENRY C. WEEKS,  
*Notary Public (50) New York Co.*

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Know all men by these presents, that we, whose names are hereunto subscribed, in consideration that the Third Avenue Savings Bank of the city of New York, upon the request hereby made by each of us, does continue its ordinary business after January 1, 1873, do hereby severally agree with each other to pay and do hereby bind ourselves severally, each for himself, his respective heirs, executors and administrators, and not one for the other, to the said the Third Avenue Savings Bank, to pay to the said savings bank during the year one thousand eight hundred and seventy-three (1873), each of us the sum of six hundred (600) dollars, or so much thereof as may be necessary to enable the said savings bank to supplement any deficiency in its income to make its payments of interest and expenses during the said year, the payments hereunder being made on the thirtieth days of June and December. And it is expressly agreed, that the amounts paid hereunder shall never constitute a lien or debt against the said savings bank, except that they shall be a lien upon any actual surplus acquired by the said savings bank beyond the amount of fifty thousand dollars (\$50,000), and shall be repaid after that time, on order of the board.

In witness thereof we have hereunto set our respective hands and seals this twenty-eighth day of January, one thousand eight hundred and seventy-two.

DAVID MORGAN.	[L. s.]	W. B. HARISON.	[L. s.]
JAMES STEPHENS.	[L. s.]	WM. S. OPDYKE.	[L. s.]
DANIEL BATES.	[L. s.]	S. D. MOULTON.	[L. s.]
WM. D. BRUNS.	[L. s.]	GEO. HENCKEN, JR.	[L. s.]
WM. A. DARLING.	[L. s.]	JOHN H. LYON.	[L. s.]
ANDREW STEVENS.	[L. s.]	JOHN LACEY.	[L. s.]
T. W. DECKER.	[L. s.]	SPENCER K. GREEN.	[L. s.]
JAMES OWENS.	[L. s.]		

In presence of

HENRY C. WEEKS.

(A true copy.)”

Senators will see that the giving and taking trustee bonds was a declaration of their being short in means. The taking of bonds for \$10,000 of the trustees as a guaranty, is an admission they are \$10,000 short on their means, and the taking of these bonds for \$95,000 and \$115,000, or whatever the figures are, showed them short, and they were providing against an ultimate day of having somebody protecting against that loss. There are a great many parties in the bond on page 239, who go in, not jointly and severally, but for a distinct sum each. It is payable on the 1st of January in the year 1883, and was made in 1873, made payable in ten years, or six months after a demand therefor. If these trustees should all go together and demand the money of themselves, they could make them payable in six months afterwards, but, if they did not, they were good for ten years. Now, I call attention to that portion of the bond on page 240 which provides as follows :

All they have to do is to cipher up \$10,000 of surplus, and then burn the bonds. The moment the bank has almost enough, no matter how they fix it, to call it good for \$10,000 above its liabilities exclusive of the bonds, then they may have the bonds back. There is a vast difference between making a gift and making a promise of a gift. The law recognizes the gift of money, the gift of a penny, of a horse, any thing that is delivered ; a gift delivered passes the title to a thing, but a promise of the best man in the world to give you a horse to-morrow is no obligation upon him. There is nothing in that sort of a promise to constitute a gift ; it is always void ; it is not an obligation of any kind. These men did not mean to give a dollar ; they provided a half-dozen places to get out without ever paying a cent and have the bonds back. There was a talk about the trustees put-

ting up the money in another institution, a talk with Mr. Ellis, and some did actually put up the money ; one takes out his money, and gives it to the bank. It is a pure gift. Had Mr. Ellis any right to suppose—did he imagine that any of these fellows ever expected to pay that bond, or had the least disposition in the world to give \$5,000 or \$10,000 apiece to this bank ? Nothing of that kind appears. All the way through, it is a pure sham, never having any money in it at all. You will see what next occurs. Bye and bye, one of these men steps forward and pays his bond. He is a rare man. One or two more of them are sued, and they demur, and he beats them on demurrer, and gets judgment against them, and collects—*nothing* on execution. Another comes in, with the plea that all the trustees were concocting a fraud, drawn into it by false pretense, and no legal obligation to the bond, showing all manner of defenses these people made. None of these cases having got to trial ; some got a little time by demurring. Judgment went against them with no result but these other cases are not yet tried. They are in the hands of an excellent man, Mr. Frederick Smythe, and I have no doubt they will be pushed by all the sources of an energetic mind, a good lawyer, but what success remains to be seen. In some cases the party was not good on execution ; in others you may not recover at all as there are defenses interposed. They were therefore no proper assets, and they all the while represented the deficiency in addition to the \$219,000. Add the \$100,000 and it makes it \$319,000. Gentlemen sometimes become accustomed to deal with large figures, but Senators, think of \$219,000 ! How many savings banks in the world, how many banks in the State of New York, in the rural district, have \$219,000 altogether ! How few men have been blessed with being able to show figures on their inventory of \$219,000 ? It is a very great amount, \$319,000 is better yet. That was the fair way to put this thing. Would half a million dollars make up Mr. Ellis ? People may guess about that whether it would or not.

I desire senators, to observe another thing, that, in the examination of these two competent gentlemen they took the real estate at the old valuation, and they gave a reason for it. It was not worth so much by any means. The bank was so rotten that there was no use of talking about it any further. I refer to page 120 of the Senate testimony. Here is Aldrich's, first, at the bottom of page 371 :

“ Q. Pages 371, 372, 374 and 376 of this report have been put in evidence, and I will call the witness' attention to it. Did you examiners, on that occasion, make out that deficiency there, and, if so, state what it was found to be ? A. We made a deficiency, I think, of over \$200,000.

Q. Look at that book and state? A. That is the deficiency of income.

Q. How much did you make the deficiency of assets at that time? A. Two hundred and nineteen thousand two hundred and twenty-six dollars and eighty-one cents, without reappraising the land; we found the deficiency was so great that we did not think it worth while to reappraise the land at that time — the real estate of the bank.”

Now I refer to page 119 — to the following:

“Q. How did you estimate the value of the real estate? A. In that respect we took the old estimate, because we found there was so large a deficiency we thought that would take a long time to look up the estimates or make a new estimate, and we took the estimate of a former examination.

Q. You thought the deficiency was very large? A. We found it was so large that it was not necessary to make any further examination in respect to the real estate, so we didn't spend any further time on it.

Q. Did you ascertain at that time, or know at that time, that the trustees had added \$100,000 to the original cost of the banking-house? A. No, sir; it was unnecessary to go into that, as the deficiency was so large.”

Senator GERARD — What was the last valuation of the real estate of the bank — \$180,000.

Mr. TRACY — Yes, sir. Their report comes in, and we have these features in it, and the letter comes along with it. The report is on pages 27, 28 and 29, which I will read.

## STATEMENT.

THIRD AVENUE.	Rate of interest.	Amount at Par.	MARKET VALUE.		Totals.
			Rate.	Amount.	
Bonds and mortgages.	7	.....	.....	.....	\$264,900 00
Kansas State bonds.....	7	\$25,000 00	100	\$25,000 00	
Georgia State bonds.....	7	50,000 00	95	47,500 00	
Louisiana State bonds (levee).....	8	100,000 00	27	27,000 00	
Alabama State bonds.....	8	68,500 00	42	28,770 00	
Tennessee State bonds (funding).....	6	55,000 00	48	26,400 00	
Virginia State bonds.....	6	2,000 00	32	640 00	
Jersey City bonds.....	6	43,000 00	95	40,850 00	
Dry Dock, East Broadway and Battery R. R. bonds....	7	10,000 00	100	10,000 00	206,160 00
Ninety-two acres of land at Tarrytown, \$1,500.....	....	.....	....	\$138,000 00	
Five houses, East 46th street (\$30,000), \$150,000; less mortgage, \$42,500.....	....	.....	....	107,500 00	
House Fifth avenue and 85th street.....	....	.....	....	85,000 00	
House East 47th street, \$42,500, less mortgage \$8,500.....	....	.....	....	34,000 00	
House 36 East 49th st., \$42,500, less mortgage, \$14,000.....	....	.....	....	28,500 00	
Banking house, Third avenue and 26th street.....	....	.....	....	180,000 00	
House and lot adjoining.....	....	.....	....	20,000 00	
Furniture and fixtures.....	....	.....	....	.....	593 000 00
Due from former counsel for bond and mort. collected	....	.....	....	.....	15,000 00
Cash in vault.....	....	.....	....	\$3,520 51	2,000 00



Cash in Fifth National Bank.....	4	.....	.....	1,885 57	
Cash in Murray Hill Bank.....	4	.....	.....	2,000 00	
Guarantee fund (individual bond of trustees).....	....	.....	.....	.....	7,406 08
Interest accrued.....	....	.....	.....	.....	115,000 00
Deficiency of assets.....	....	.....	.....	.....	20,420 00
					219,226 81
					<u>\$1,443,112 89</u>
Due depositors.....	....	.....	.....	\$1,414,892 89	
Interest accrued.....	....	.....	.....	18,000 00	
Due Fifth National Bank.....	....	.....	.....	8,000 00	
Ground rent and interest on mortgage.....	....	.....	.....	2,220 00	1,443,112 89

## STATEMENT — (Continued).

INVESTMENTS.	Rate of interest.	Amount at par.	Revenue.	Totals.
INCOME.				
Bonds and mortgages.....	7	\$266,900 00	\$18,683 00	
State bonds.....	7	75,000 00	5,250 00	
Jersey City bonds.....	6	43,000 00	2,580 00	
City railroad bonds.....	7	10,000 00	700 00	
Cash in bank.....	4	4,000 00	160 00	
Rents.....	....	.....	22,720 00	\$50,093 00
CHARGES.				
Interest to depositors.....	....	.....	\$82,000 00	
Salaries.....	....	.....	4,340 00	
Internal revenue tax.....	....	.....	1,300 00	
Other taxes.....	....	.....	6,244 00	
All other charges.....	....	.....	1,000 00	
Deficiency of income.....	....	.....	.....	\$44,791 00

NEW YORK, *March 24, 1875.*Hon. D. C. ELLIS, *Superintendent:*

DEAR SIR. — Inclosed I hand you report in Third Avenue Savings Bank. There is \$13,000 due from trustees for interest on their bonds; only a few of them having paid any thing the past year. Mr. Lacy, who was on the bond for \$2,500, is dead, and his executors will contest the payment of the amount. Andrew Stevens (\$10,000) has failed and James Stevens (\$10,000), it is supposed, has “softening of the brain,” and from present appearances very little will be collected on the bond.

The house on Fifth avenue, \$85,000, has not been rented for two years past.

The trustees have sold \$150,000 Kansas at par, but have not shown much financial capacity in their recent purchase of \$55,000 Tennessee bonds at 51. The January report was “made up” for the occasion, all the stocks or bonds being put in at par; over \$20,000 past due coupons counted in as accrued interest; \$31,000 added to the value of the Tarrytown property, etc., etc.

All the “ability and pluck” shown three years ago during the “run,” has apparently disappeared, and the old adage, “rats leaving a sinking ship,” is being verified in the resignation of a number of trustees during the past year. I do not think the depositors will receive more than fifty cents on a dollar.

Yours truly,

GEORGE W. REID.

One would suppose, looking at the statutes that have been passed that Mr. Ellis' first inquiry upon getting that would be to ask for the first train to carry him to New York with a competent examiner to examine that concern, and hand it over to the Attorney-General. What does Mr. Ellis do? Nothing, just nothing, does not make an order upon it, does not even write them one of his billet-doux, suggesting any thing, but lets them alone. It is not for us to come here and say what responsibility attaches to an officer for such kind of neglect of duty; but it is for us to say to the Senate, and implore the Senate to recognize the truth which the whole world must see, that he is not the man for that place for an hour, any more than the officers of the Third Avenue Savings Bank were the men for their places.

We come down now to March, April, May, June, July, August, September, about six months, and see what happened then. Does it come to the department then? Does he begin to play the thunderer upon them? Not at all. He is sitting, meek and quiet as a pigeon

in his coop ; and the bank was going on and taking deposits, and doing it under the protection — which is a continual sort of certificate to the poor — that if the superintendant let it alone, it was to be a fit place to be trusted ; and these fellows went on until they had not money enough to run the machine, and then reported themselves to the superintendent. The explosion came from the bank itself, and not from the department.

At the next legislature, Mr. Ellis made a report, and he reported about the closing of this bank, and as we have not heard his side upon it, I will read a passage of that. You will find it in the committee testimony, at page 410.

“The examination of the bank made by the department in 1875, showed conclusively that the interest of the depositors required the bank to discontinue business, and on my recommendation the Attorney-General commenced an action, and placed the institution in the hands of a receiver. Whether it would have been better had a receiver been appointed in 1871 instead of 1875, is a question mostly speculative.”

Gentlemen, it is true it was done on his recommendation. The bank officers, when there was no money left to run the machine at all, got together the trustees in the evening at half-past seven o'clock, and held an evening session, on the twenty-eighth day of September, and passed a resolution at that time, and the next morning at ten o'clock it was in the hands of a receiver at Albany, and Mr. Carman, the secretary, was the receiver. At half-past seven, in New York, these trustees decided they would have it put into a receiver's hands, through the superintendent, and appointed a committee, and by ten o'clock the next morning the whole thing was done and Mr. Carman, the secretary and one of the committee, was appointed receiver. It is not literally a lie for the superintendent to say that “I placed it in the hands of the Attorney-General,” because he did place it there. It is not literally untrue for him to say that “by the examination of the department, in 1875, I discovered so and so ;” but in both cases it would have been a great deal more like telling the whole truth, if he had said, “on such a day in 1875, from the examination of the department, I became satisfied this concern ought to stop, and on such another day, six months afterwards, the bank got satisfied of the same thing and they would not go any farther, and then I handed them over one morning to the Attorney-General.” That would have been telling the whole truth. I do not mean to say there is any falsity in it ; I refer to the resolution adopted at a meeting of the board of trustees, which will be found in the Senate testimony, page 30. There were no deposits received after that.

The next paper I call your attention to is the fact to fix the date that this proceeding, to get a receiver through the Attorney-General, arose in this way : The superintendent writes a letter to the Attorney-General, informing him this bank is unfit to go on and ought to be stopped, and recommends him to take that measure, and the Attorney-General issues a summons and complaint and affidavit, and order to show cause, a pretty long set of papers, why an injunction should not be granted, or notice of motion for an injunction, and they are served on the institution by the Attorney-General, and then the institution is cited to appear and have the thing determined by the court on motion whether there should be a receiver appointed or not.

At Albany, the next morning, they could not get into any of these offices until towards ten o'clock.

On page 31 of the Senate testimony you will find the following notice, and they got up a notice returnable at ten o'clock the next morning. I will now call the attention of the Senate to the following :

“SUPREME COURT—ALBANY COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK *against* THE THIRD AVENUE SAVINGS BANK.

*To the defendant above named :*

You will please take notice that on the annexed papers this court will be moved, at a Special Term thereof, to be held at the City Hall in the city of Albany on the 29th day of September, 1875, at ten o'clock in the forenoon, that the Third Avenue Savings Bank, the defendant above named, its officers and agents, be restrained and enjoined from exercising any of its corporate rights, franchises or privileges, and from collecting or receiving any debts or demands, and from paying out or in any manner transferring or delivering to any person any of the moneys, property or assets of the said corporation, and that a receiver of the property and effects of said corporation be appointed pursuant to the provisions of the Revised Statutes and laws of this State, with all the power and authority conferred upon receivers in such cases; and that said plaintiff have such other or further relief in the premises as may be proper, with costs of this motion.

Yours, etc.,

DANIEL PRATT, *Attorney-General,*  
*Plaintiff's Attorney, Albany, N. Y.*

At a Special Term of the Supreme Court of the State of New York, held at the City Hall in the city of Albany on the 29th day of September, 1875.

Present—Hon. A. MELVIN OSBORN, *Justice*.

THE PEOPLE OF THE STATE OF NEW YORK *against* THE THIRD AVENUE SAVINGS BANK.

On reading and filing the summons and complaint, report of Hon. De Witt C. Ellis and the affidavit of Daniel Bates, and a notice of this motion ; after hearing Charles S. Fairchild, Deputy Attorney-General, on behalf of the plaintiff above named, and John T. Hoffman on behalf of the above-named defendant, and after due deliberation hereupon had it is

Ordered, That William S. Carman, of the city of New York, be and he hereby is appointed receiver of all the corporate property, assets and effects held by it.

It is further ordered that such receiver, before entering upon the duties of his office, execute a bond to be signed by himself and sufficient sureties, to be approved, after notice of application therefor to the Attorney-General, by a justice of the Supreme Court, as to its form and sufficiency, and manner of execution, in the penal sum of \$400,000, said bond to be given to the People of the State of New York, and to be filed in the Albany county clerk's office.

It is further ordered that said receiver have and enjoy all the powers and duties conferred upon such receivers by the Revised Statutes of the State of New York and the laws thereof ; that all moneys received by him, and all the securities and obligations now held by said defendant, The Third Avenue Savings Bank, excepting the sum of \$10,000, to be retained by said receiver for the payment of necessary and incidental disbursements, be deposited with the United States Trust Company of the city of New York, to be held by said last-named corporation, subject to the further order of this court, and to the credit of the defendant in this action, said money and securities so deposited as aforesaid with said United States Trust Company not to be delivered over by it, except subject to and in pursuance of the order of this court.

It is further ordered that said corporation, The Third Avenue Savings Bank, its officers and agents, be restrained and enjoined from exercising any of its corporate rights, privileges or franchises, and from collecting or receiving any debts or demands, and from paying out or in any manner transferring or delivering to any other person than the receiver above named, any of the moneys, property or effects of the said defendant above named.

A. M. OSBORN,  
*Justice Supreme Court.*"

There was a summons and complaint, and all that kind of thing. The point I want to call the attention of the Senate to is precisely this, that absolutely there was no time lost in this thing, and the evidence shows how it was done.

The bank went up there and employed counsel to prepare the papers, and they were all ready before they went to see Mr. Ellis. They went to see him. They were shown into his room, and there he conferred with them; and, while there, he sent out to his clerk to send him the last report of the examiners showing the \$219,000 deficiency.

Senator SPRAGUE — Mr. Tracy, on page 32 the order recites that, on reading and filing the summons and complaint, report of Hon. De Witt C. Ellis, etc., is there any evidence that this matter was called to Mr. Ellis' attention, or did he make any such report?

Mr. TRACY — I will show you what it is in a moment. The question of the Senator was one which I answered at large. They found a very good man, Mr. Hun, who is an expert in all public matters at Albany, and who got up these papers; and they went to the office of the superintendent, and they were shown into his private room; and, while in there, he sends out his clerk to bring him in the last report of the bank — the report of January, 1875, in which he had the demonstration made of its being dishonest and a fraud all the way through, as shown by his own examiners. He had that brought in before him, and in a few moments the proceedings were complete and Mr. Ellis verified the complaint. Mr. Ellis' letter was completed and given to them; and he comes to you and tells you that, when the committee arrived at his office, he was getting down the statutes, preparing to write the letter. Something or other had suggested the shadow of coming events. It had got to him in a mysterious way, and he had sat down to investigate this matter. What had stirred him up after his sleep of six months? At the sixtieth minute of the eleventh hour he came, and then the complaint was made.

I will read this complaint, if you please.

#### “SUPREME COURT — ALBANY COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK *against* THE THIRD AVENUE SAVINGS BANK.

The above-named plaintiffs, by Daniel Pratt, their Attorney-General, complain of the defendant, and allege:

That the defendant is a corporation duly created and organized under and in pursuance of an act of the Legislature of the State of

New York, entitled "An act to incorporate the Bloomingdale Savings Bank," passed April 17, 1854, and an act entitled "An act to amend an act entitled 'An act to incorporate the Bloomingdale Savings Bank,'" passed April seventeenth, one thousand eight hundred and fifty-four, passed February 24, 1859, and "An act to amend 'An act entitled An act to incorporate the Bloomingdale Savings Bank,'" passed April 17, 1854; and "An act amending the same," passed February 24, 1859, passed April 1, 1865; and "An act in relation to the Third Avenue Savings Bank," passed April 25, 1867, and the several acts amendatory to those above named.

That said corporation has for several years last past conducted and carried on in the city of New York, in the State aforesaid, the business of a savings bank.

That said corporation is now and has been for more than one year last past insolvent, and unable to pay its debts and the liabilities of the said corporation arising from the deposits of money made therein, have been and are very much greater than, and far in excess of, the value of all the assets of said corporation.

That, in pursuance of chapter 371 of the laws of the State of New York, passed in the year 1875, and chapter 693 of the laws of 1871, the Superintendent of the Banking Department of the State of New York has caused said corporation to be visited and examined by two competent persons appointed by him for that purpose, and said Superintendent has sent a communication to the Attorney-General of the State of New York, a copy of which is hereto annexed and made part of this complaint.

Wherefore, these plaintiffs demand judgment, first, that said corporation, the defendant above named, be dissolved; second, that said corporation, its officers and agents, be restrained and enjoined from exercising any of its corporate rights, privileges or franchises, and from collecting or receiving any debts or demands, and from paying out or in any manner transferring or delivering to any person any of the moneys, property or effects of the said corporation; that a receiver of the property and effects of the said corporation may be appointed pursuant to the provisions of the Revised Statutes and laws of this State, with all the powers and authority conferred upon receivers in such cases; that the plaintiffs have their costs of this action.

DANIEL PRATT, *Attorney-General.*

*Plaintiff's Counsel.*



STATE OF NEW YORK, }  
ALBANY CITY AND COUNTY. } ss. :

De Witt C. Ellis, of said city, heing duly sworn, says: That he is the Superintendent of the Banking Department of the State of New York, and is familiar with the facts set forth in the foregoing complaint, that the aforesaid complaint is true of his own knowledge except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

D. C. ELLIS.

Sworn to before me this 29th }  
day of September, 1875. }

R. M. Barber,  
*Commissioner of Deeds, Albany County."*

You will notice this was verified by the oath of Superintendent Ellis himself. Somebody had to swear to the complaint, somebody that knew, and therefore Mr. Ellis swears. I will now call your attention to the letter of Mr. Ellis to the Attorney-General, which is as follows:

#### STATE OF NEW YORK :

BANK DEPARTMENT, }  
ALBANY, September 29, 1875. }

HON. DANIEL PRATT, *Attorney-General :*

SIR. — In pursuance of section 44 of chapter 371, Laws of 1875, I hereby call your attention to the condition of the Third Avenue Savings Bank, in the city of New York. From the official report made by Geo. W. Reid and W. F. Aldrich, examiners duly appointed by me to examine into the affairs of said savings bank, it appears that on the twenty-third day of March last the liabilities of said bank were \$1,443,112.39, and the assets were \$1,223,886.08, showing a deficiency of assets, with which to meet its liabilities, of \$219,229.81. From official knowledge I have reason to believe that the deficiency has largely increased since that date, and that the condition of said bank is such that it is no longer safe or expedient for it to continue its business. I would, therefore, recommend that you take such legal proceedings in the premises as may be required to close up its affairs.

Respectfully yours,

D. C. ELLIS,

*Superintendent.*

STATE OF NEW YORK,  
CITY AND COUNTY OF NEW YORK. } ss. :

Daniel Bates, of the city of New York, being duly sworn, says that he is the president of the Third Avenue Savings Bank, defendant in the above-entitled action; that the allegation of the complaint and the certificate or communication of D. C. Ellis, superintendent, etc., hereto annexed, are true.

DANIEL BATES.

Sworn to before me this 29th }  
day of September, 1875. }

R. M. BARBER,

*Commissioner of Deeds, Albany, N. Y.*

Indorsed: Filed September 29, 1875, 4:15 P. M.

### SUPREME COURT—ALBANY COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK *against* THE THIRD AVENUE SAVINGS BANK.

And now come the Third Avenue Savings Bank, defendant above named, by M. T. & L. G. Hun, its attorneys, and answers the complaint of the plaintiff and alleges: That the defendant is and was, during the times mentioned in the complaint, a corporation duly created and organized under and in pursuance of the laws of the State of New York, and carried on business in the city of New York, as in the complaint alleged; that the several allegations in the complaint contained, as to the financial condition of the defendant and as to the Superintendent of the Banking Department of the State of New York, are true.

M. T. & L. G. HUN.

*Defendant's Attorneys, Albany, N. Y.*

### SUPREME COURT—ALBANY COUNTY.

THE PEOPLE OF THE STATE OF NEW YORK *against* THE THIRD AVENUE SAVINGS BANK.

To Messrs. M. T. & L. G. HUN, *Defendant's Attorneys*:

GENTLEMEN.—Take notice that on all the pleadings and papers, record and proceedings had in this action, this court will be moved at

a Special Term thereof, to be held at the City Hall, in the city of Albany, on the 4th day of October, 1875, at the opening of the court on that day or as soon thereafter as counsel can be heard that judgment of dissolution be entered against the defendant above named, and that a receiver of its assets and effects be appointed, and that the plaintiff have such other or further order or relief in the premises as may be just.

Yours, etc.,

DANIEL PRATT, *Attorney-General,*  
*Plaintiff's Attorney.*

Upon this the proceedings were set forth, and finally, after injunctions and all that kind of thing was passed, an appointment was made of receiver of Mr. Carman. I will call your attention to page 32 and you will see how this came in. Then there is a provision that he shall deliver the usual bond, and that the delivery shall be made to him in the usual way; and that was indorsed in and recorded in the county clerk's office on the same day. Now, Mr. Ellis was by all this time; he condemned that report which Mr. Carman had signed, as a false report; it *was* a false report. Mr. Carman had been secretary from that time to this. Mr. Ellis stood by and saw this done, and what does he say about it? He says to the Senate, "it was none of my business to appoint a receiver," but it was his business to cry out and spare not when there was such a proposition as that to make such a man receiver of the bank.

Senator SPRAGUE—Mr. Tracy, does it appear when Mr. Carman was appointed secretary.

Mr. TRACY—A little while before he signed the report; two weeks, I think; see what Mr. Ellis says before the committee:

"Q. Did you or did you not, think it your duty to inform the court, etc.," and he replies "A. I only saw these gentlemen for a few minutes; I do not think the fact occurred to me at all about the reports, etc., \* \* \* although it is none of my business to appoint a receiver."

A wonderfully easy way to define his powers; very much all the way through. Mr. Carman was a totally unfit person to be receiver. Did Mr. Ellis make any complaint about it? Not any complaint, whatever. Other people saw it and said it was an outrage, and they went before the Supreme Court and made the complaint known; and it was looked into and held to be an outrage, and Carman was turned out.

I call your attention to those proceedings on page 39. There is an order made by the Hon. T. R. Westbrook, on the 13th day of November, 1875 entitled in this action. The proceeding was instituted

before him on the thirtieth of October, and was returnable the sixth of November, with the petition, affidavits and papers on which the same was granted, and proof of service and had been adjourned, from time to time, by the counsel for Carman, the receiver.

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“PLAINTIFFS’ EXHIBIT No. 8.

At a Special Term of the Supreme Court of the State of New York, held at the Supreme Court Chambers, in the City Hall at the city of Kingston and county of Ulster, on the 13th day of November, 1875.

Present—Hon. T. R. WESTBROOK, *Justice*.

THE PEOPLE OF THE STATE OF NEW YORK *against* THE THIRD AVENUE SAVINGS BANK.

On reading and filling the order to show cause in this action, dated the 30th day of October, 1875, made by Hon. T. R. Westbrook, justice, etc., returnable on the 6th day of November, 1875, with the petition, affidavits and papers on which the same was granted, with proof of service of the same as required by said order, the return thereof having been changed to this day by order of the justice who made the same on the application of William Peet, attorney for William S. Carman, receiver, etc., and on motion of Edward Fitch, of counsel for the petitioner named in said petition, after hearing Mr. Edward Fitch, of counsel for said petitioner, and Algernon S. Sullivan and Mr. James S. Sterns, each separately appearing for other creditors of the defendant concurring in the petition, and after hearing Messrs. Peet and Hun, for Mr. Carman, the receiver and the defendant, and Mr. Charles S. Fairchild, deputy attorney-general for the people, it is ordered, adjudged and decreed as follows :

*First.* That the appointment of William S. Carman, of the city of New York, as receiver under and by decree of this court, made in this action at a Special Term thereof, held at the City Hall, in the city of Albany, on the 4th day of October, 1875, be, and the same is, hereby vacated, annulled and revoked, and the said William S. Carman is hereby perpetually enjoined and commanded to cease and desist from performing or exercising all and every the powers and duties given to or conferred upon him by the said decree.

*Second.* That Samuel H. Hurd, of the city of New York, be and he hereby is appointed receiver in the place and stead of said William

S. Carman, of all the stock, property, things in action and effects real and personal of the corporation The Third Avenue Savings Bank, defendant in this action, and of all property held by it with the usual powers and duties in such cases enjoyed and exercised by receivers according to the practice of this court, subject, nevertheless, to all the terms, conditions and provisions expressed and contained in the said decree.

*Third.* That the said William S. Carman account for and deliver and pay over to the said Samuel H. Hurd, hereby appointed receiver, all the money, stocks, property, things in action and effects, both real and personal, which have come into his possession and control as receiver, as aforesaid, and that he render a correct and true account of all things done and suffered by him as such receiver.

*Fourth.* That Delano C. Calvin be, and he hereby is, appointed referee to take and state the account of said William S. Carman, as receiver, as aforesaid, and report the same to the court, with his opinion thereon.

*Fifth.* That the final decree in this action, made as aforesaid, be and the same is hereby amended so as to conform to this order.

*Sixth.* It is further ordered that the said Samuel H. Hurd, who is hereby appointed receiver as herein before stated, shall execute a bond in the penalty of one hundred and fifty thousand dollars, conditioned for the faithful performance of the trust committed to him as such receiver as aforesaid; the form thereof and sureties thereto shall be approved by one of the justices of this court, upon the approval whereof, and not before, the said Samuel H. Hurd shall enter upon the discharge of his duties as such receiver; that upon the entry of this order and the filing of the bond approved as aforesaid, and the presentation to the said William S. Carman of a copy of this order duly certified by the clerk of the county of Albany, and of a certificate by the clerk aforesaid, that the bond hereby required has been duly filed, the said William S. Carman, who is hereby removed from his position as receiver, shall immediately deliver over to the said Samuel H. Hurd all property of any kind, name and nature, which he has in his possession or under his control by virtue of his original appointment as such receiver, and also all books, papers, documents, vouchers and memoranda kept, made or taken by him while acting as such receiver.

And it is further ordered that the judgment entered in this action remain in full force, except so far as it may be modified by this order, the various parties who have appeared upon this motion will be heard hereafter upon the allowance, if any, to be made to counsel.

Clerk of Albany county will enter the foregoing order.

(Copy.)

T. R. WESTBROOK,

*Justice Supreme Court.*

Indorsed: Recorded in Albany County Clerk's office December 6, 1875. 2 M. in book of orders appointing receivers of judgment debtors at page 444, etc.

WM. E. HASWELL,  
*Clerk.*

Filed December 6, 1875, 2 P. M.

## SUPREME COURT.

THE PEOPLE OF THE STATE OF NEW YORK *against* THE THIRD  
AVENUE SAVINGS BANK.

*Ulster Special Term, November, 1875.*

MOTION on the part of the defendants to remove William S. Carman from the office of receiver of the bank.

*Mr. Fitch*, for sundry depositors making the motion.

*Algernon S. Sullivan*, for other depositors who unite in the application.

*James S. Stearns*, for still other depositors who also asked the removal of the receiver.

*Peet & Hun*, for the receiver.

*Charles S. Fairchild*, Deputy Attorney-General, for the people.

WESTBROOK, J.—Continual engagements in Circuit, since the submission of this matter one week ago, have prevented its earlier examination and decision, and other and pressing duties at the present only allow a very brief statement of the reasons which induce me to grant the application to remove the receiver. From the complaint in the action, which was verified by Daniel Bates, president of the defendant, it appears that The Third Avenue Savings Bank was on the 29th day of September, 1875 (the day of the verification of such complaint), insolvent, and had been for more than a year prior to such date. On the 23d day of January, 1875, the receiver, who was then the secretary of the corporation, signed and verified a report which purported to be a just and true statement of the condition thereof, on the first day of that month, whereby it was shown that the bank was solvent, and that the assets of the institution were \$6,960.65, in excess of its liabilities. On the 26th day of December, 1874, and about a month prior to the

date of such report, the present receiver had been made secretary of the defendant, at which time its situation must have been known to the directors who appointed him. The suit to dissolve the corporation and wind up its affairs, was confessedly instituted at the request of its directors and the appointment of the present receiver upon the application for judgment. No objection being made by any of the counsel who appeared in it originally, was evidently the suggestion of such officers. The present application then presents this question: Is an individual, who, on the 26th day of December, 1874, was appointed secretary of the then known insolvent savings bank by its three directors, who was used by them in a month thereafter to make and verify a false statement declaring its solvency, and who was named by them as its receiver in a suit which they caused to be instituted to wind up its affairs, a fit and proper person to execute such trust; especially should he be retained when every creditor, so far as known, asks for his removal? The statement of the case indicates the answer. If Mr. Carman made a willfully false oath in January, 1875, representing the bank to be solvent, he surely is not a proper person to be intrusted with the delicate and important duties which he is called upon as a receiver to discharge. If, after filling the office of secretary for only three days less than a month he could be so easily imposed upon as to make such false statements, he certainly has not the requisite mental qualifications to grapple with the difficulties which must surround him in his new position. If he was so confiding as he says he was, by way of excuse, as to take the actuary's statement of the condition of the company as true, and swear positively upon mere information, without knowledge, such confidence may be imposed upon hereafter, as it certainly has been in the past, to the great injury of others. Apart, however, from the objections which present themselves to the continuance of Mr. Carman as receiver, by reason of his confessedly erroneous report and affidavit in January last, his connection with the managers of the institution renders him an improper person to discharge this trust. He was the secretary of their selection, the receiver of their choice. In his latter capacity he will be called upon to investigate the acts of his patrons, and the proper discharge of his duties may require him to sue those to whom he is under personal obligations. Duty and feeling should not collide in the person of the receiver. If they do, and the former is overcome, human nature will only repeat itself. To such a temptation no officer which the court selects should be subjected. These views have been expressed before by me in another case, and they are regarded as sound now. Besides, the investigation of his own conduct as secretary may be necessary. How many of the present depositors of the defendant, if any, have become such by reason of his false statement in January does not

appear. It is but fair to conclude, however, that as there was no public disavowal by Mr. Carman of the want of truth in his affidavit until this suit instituted in September last to dissolve and distribute the effects of the corporation, startled the public, that considerable of the creditors became such during that period. Is it fair to such persons that Mr. Carman should sit in judgment upon his own conduct? To this most obviously only a negative answer can be given. For the reasons thus briefly stated, Mr. Carman must be removed and a new receiver appointed. The attorneys for the moving parties will prepare the necessary order and submit the same to me for approval.

I now call the attention of the Senate to the testimony taken before the committee at page 464, the facts on which I make these assertions. This was on the examination of Mr. McDonald, an expert who was examined before the committee, and has had large scrutiny of these papers, and was examined as to their contents.

“Q. When the bank stopped, was there money enough there to run the bank, to pay the expenses of the bank? A. No, sir.

Q. They had used up the money? A. Yes, sir.”

I now refer to page 55 of this testimony before the Senate, as to the number of depositors.

“Q. Will you state how many depositors there were of that bank altogether at the time it was closed? A. Upwards of 7,000 open accounts.

Q. To what amount did they all come to? A. One million four hundred thousand and odd dollars.”

I now refer to the same book, page 95, to the examination of Mr. Sellers. He was asked if he had made any further figures about the depositors, and he said yes.

“Q. Give them? A. Between the twenty-second of March, as I understand the question, and the twenty-ninth of September, there was deposited in that bank \$319,537.17. There was drawn out during that time \$433,978.58.”

Senators will in a moment see that the amount drawn out in that time exceeded the deposits \$114,000. I now refer to page 54 of the same book.

“Q. Will you turn to the books which are here and state to the Senate how many new depositors made deposits with the bank between March, 1875, and September, 1875? A. I can state that; I have not the books here; it was impossible to bring them here; it would take a car to bring them up here.

“Q. Can you state them? A. Yes, sir; upwards of 700 new depositors between March twenty-second and the day the bank closed; between March twenty-second, the day of the examination, and the closing of the bank.



Q. What was the amount of depositors in that period? A. In the neighborhood of \$130,000, in the new accounts.

Q. What other deposits were received at that time, and the amount? A. I do not remember that at all; I have no way of getting at that.

Q. Will you state how much was drawn out during that period? A. About \$34,000, leaving about \$96,000 of the new money in the bank when the bank closed.

Q. About \$34,000 of the new depositors drawn out? A. Yes, sir.

Q. Leaving how much in? A. In the neighborhood of about \$94,000 to \$96,000."

Those are the new victims, after Mr. Ellis was satisfied of its insolvency. He let it alone, holding out these false facts before the world.

Can anybody invent a greater case of neglect of duty than that, of total inefficiency, of knowing "how not to do it," in the right time? Is the Superintendent of the Banking Department a fit man to be left in that place, with all these victims in hunger and want; entirely the victims of his inattention, inefficiency, incapacity, neglect—or call it what you please—his not doing his duty, where it was plainly before his eyes what he should do?

There has been one dividend of fifteen per cent, and what more they will get we do not know, a very poor solace to a person who had in there a very small sum of money in 1875, to find in about a year or two after that, instead of having their money safe drawing a little interest, five or six per cent a year, they will get fifteen per cent of the original money back again. I can but think of a case I heard of, of two servant women of very moderate intelligence, the one saying she had got her money in a savings bank and the other one said: "I trust no savings bank, I gave all my money to churches, and it is laid up in heaven." I think that, while they laughed at her as an improvident; she was quite as witty as the other who trusted to a savings bank.

Now, during the period that Mr. Ellis let this bank go on, its pretended resources, included State bonds — Kansas, Louisiana, Georgia, Alabama and Virginia bonds of nearly \$400,000. It also included a bank-house entered as \$200,000, which it never was worth, and never will bring, and never cost; the property at Tarrytown, that had been gathered in some scramble to collect a debt improvidently made by a former president—100 acres for villa-sites, with no villa upon it. That was entered as a large item and when times were tight in the bank, and that was depreciated, they ciphered upon it, and added about \$130,000 to the valuation of that land at Tarrytown, to

keep the bank floating; and thus the thing went on, having about \$400,000 of these bonds and over \$500,000, of real estate in their hands and then from \$95,000 to \$115,000 of what was called "trustees' obligation." Now, this land was afterwards some of it, sold, a very little of it; but it was a most miserable asset, one of those things a merchant takes for a bad debt; and puts the deed in his desk, and thinks not about it until the tax gatherer comes; for one of these days something may come out of it. In the meantime, it is a small loss, eating upon the treasury with taxes.

The most extraordinary thing is this valuation of the Tarrytown property, increased by resolution of the board, July, 1874. It will be recollected the panic came in the autumn of 1873 and things began to taper off from that time. In July, 1874, you will see how they managed it; I will read from page 57 :

"On motion of Mr. Hencken, seconded by Mr. Bruns, resolved, that in view of the fact that the annexation of a large portion of Westchester county to the city of New York, and the prospect of a speedy completion of the New York, Boston and Montreal railroad have enhanced the value of the Tarrytown property, the application of that real estate in the July statement be estimated as follows:

Seventy-seven acres at \$2,000.....	\$154,000
Fifteen acres at \$1,000.....	15,000
Total.....	<u>\$169,000</u>

Also the following resolution : On motion of Mr. Bruns, seconded by Mr. Harison, the usual semi-annual dividend was declared for July."

They fix up the balance by raising the price of that property in a falling market, without a customer for a lot. There never was any of it sold until the receiver sold one lot. This was no secret; it was right before his eyes if he wanted to see it; if it was any of his business to see it, he could see it or could have had it seen by somebody else.

Will the Senate be good enough to look at page 17? There you will find the real estate at Tarrytown, Westchester county, New York, cost and market value, \$138,000.

On page 19 you will see a repetition of it. On page 17 I find :

"Amount of assets not included under either of the above heads, the particular items of which are set forth in Schedule G., hereto annexed, \$96,120.49."

On page 19 it is reported :

"Amount of assets not included under either of the above heads, the particular items of which are set forth in Schedule G., hereto annexed, \$128,170.45."

Now, all you have got to do is to compare the two schedules and you will see how the thing is done. These schedules were read here, but, by some accident, they were not printed; but they are in the reports.

Here is Assembly Document of 1875, No. 108, of the annual report of the Bank Department, which contains these things complete.

Senator BRADLEY — What are the Louisiana bonds put at in that report?

Mr. OLMSTEAD — All the way through, \$100,000. The Tarrytown property was estimated at \$31,000 over cost in July, 1874.

Senator BRADLEY — That was in 1875.

Mr. TRACY — In 1874.

Mr. CHAPMAN — That valuation was not increased until after the July dividend was passed, and did not appear to the department until the 1st of January, 1875, and that did not come to him until after the examination of Reid and Aldrich.

Mr. TRACY — The remark I made about it before was that it was in the minutes of the bank, and, if the superintendent had performed his duty, in looking after the bank, it would have been seen at once. It was kept up on a fictitious entry. The examiners returned that they did not scrutinize the real estate, as the bank was in such an unsound condition, and so they left it there. Then, there are other items of real estate which was increased all along, clear down to 1875. They raised on the banking house; that was shown in evidence before you. Before they got through they had raised \$100,000 on the banking-house, altogether. It was sometime before when they began it.

We will see what Mr. Reid says about it in his testimony before the committee, at page 388:

“By Senator ST. JOHN:

Q. I was speaking about the reports of the increased value of this real estate; when I spoke about it I did not refer to your reports; I referred to the reports made by the bank itself, to the Superintendent of the Bank Department; therefore, I say that the figures which I made were shown to be entirely correct in regard to it, that the real estate of the bank in 1873, was \$546,551; at the time that report was made, I don't know who were their officers — yes, Decker and Morgan were the people who made the report; they then show an excess of assets over liabilities of \$15,659; the next year they reported that, as I stated before, at \$579,651, and added thereby \$33,100 to their estimated value of real estate, and having done that, it left them according to their accounts, taking their statement, an excess of liabilities of \$6,973; by adding \$33,000 to their real estate, they were still able to

show to the department on their returns a balance of assets over liabilities of \$6,973 ; the next thing comes in in those same reports in 1875 ; I don't know whether you paid any attention to those reports or not? A. I have looked them over, but I have not the items ; I did not examine them ; I have nothing to do with them.

Q. The next report was made \$598,567, deducting the valuation the year before—of 1874, \$579,651—it made an additional increase of this \$18,916 ; I say that the reports made to the department in those two years shows an increase of \$52,015.21, put on their real estate? A. Yes, sir.”

Mr. MCGUIRE—I think your statement is hardly warranted by the fact. For 1874, the Tarrytown property is put in at 138,000.

Mr. TRACY—It is put in at that. Now, the Senate will observe that this bank is paying dividends clear down to a very late period—down to their explosion—and they covered them up by making fraudulent entries, and that is in proof at page 463 of the committee.

“ By Senator WELLMAN :

Q. I understand you to say the total amount of dividends declared were made up from fraudulent entries? A. Yes, sir.

Q. Then, what becomes of the earnings? A. I will show you ; at the time the debit against this account—at the time these fraudulent entries were made—that debit wiped out the entire amount of those receipts ; the debit to the profit and loss account on the 1st of July, 1872 ; you have to go back to get at this.”

It was a fraud to make a dividend, and the dividend itself was a greater fraud. It was obvious that the depositors' ledger and the general ledger did not correspond in showing the amount of the liabilities of the bank. The depositors' ledger has an aggregation of footings, showing the amount of the deposits and the amount due depositors above the payments due to them, and the general ledger should correspond with that thing ; but it did not. The depositors were creditors to a larger amount than appeared upon the general ledger, and the depositors' ledger was correct ; and by fraud this had been transferred ; and, in order to ascertain correctly the correct figures about it, it was the work of many days ; but, to ascertain the fact that they did not agree, was only the work of a few minutes.

I will now call the attention of the Senate to the committee testimony on page 462, which I will read :

“ By Senator ST. JOHN :

Q. You have been questioned as regards how long it would take to find out the difference on the deposit ledger ; how long would it take

an accountant to find out those other deficiencies which you have named? A. It might take half an hour or an hour; I could do it in ten minutes; there are only two accounts to look at—the profit and loss and suspense account; anybody could take up this ledger and find these false entries within an hour, every one of them.”

These deposits exceeded the general debt by a very large sum. It was not a slight affair. I will read from page 51 of the Senate testimony.

“Q. In the examination of your books, did you find a deficiency of about \$56,000 of cash, between the depositors’ account and the cash account? A. Yes, sir.

Q. Point that out, if you please? A. On the 24th of September, 1875, I find on the journal this entry, made by Mr. Carman previous to his removal a few days: ‘Profit and loss. Dr. To depositors, account, \$66,617.28,’ this amount being the difference between the general ledger and the dealers’ ledgers, as appears by balancing the dealers’ ledgers, commencing the 1st of January, 1875, and continuing the examination by the secretary and book-keepers down to date. From information received of former clerks of this bank, this difference has existed in the books for several years.

By the PRESIDENT :

Q. How much is the difference? A. Sixty-six thousand six hundred and seventeen dollars and twenty-eight cents; that is to say, the dealers’ ledgers show \$66,617.28 more due to the individual depositors than the general ledger did.”

Now the fall in the price of real estate is no argument to relieve the superintendent of his responsibility. It seems that the whole world knew that, after the panic, real estate necessarily fell, and continued to fall until this day. The examination of April, 1873, before the panic, showed a deficit of 219,000 and odd dollars, with real estate put in at the old price. In the examination in March, 1875, they did not disturb the old valuation, but left it as put in 1873, as it had been put in before the panic; and the examination of 1875 showed an enormous deficiency, without changing those old prices; Aldrich swearing he left the real estate as it stood, because he found there was such a large deficiency; he did not, therefore, figure further in the matter than to show it was gone any way. I ask what right Mr. Ellis had, at any time after the panic of 1873, to suppose this bank would recuperate with deficit so large, with a large amount of real estate on a falling market, with a southern State bonds to a large amount, and \$100,000 of unsalable Louisiana bonds, returned as unfavorable to him at that time. As it stood in April, 1873, the bank was insolvent, and when the panic came, its insolvency

only deepened, and left no hope. Suppose, Mr. President, it is allowed to go on, to try to make it up. Let us see how it is going to do it; let us track them out. Suppose that new depositors came there and put in \$1,000,000, and the bank loans it out, it pays the depositors about six per cent, something like that, and they get how much? Do they get seven per cent? Not quite; it has its expenses to pay, and if it nets six and one-half per cent, it does very well. How much does it make in a year out of \$1,000,000? \$5,000; Suppose it does not lose a cent, everything goes right; at that rate, how long would it take to sponge off this \$219,000? It would take the life of man; there is no such thing as a savings bank with a deficiency, and insolvent, working itself out by getting poor people's money in there to loan, and making a profit of it. The profit is exceedingly small, and it is known that, in most of these banks, the accumulation is very trifling; and it is a long time before it becomes any considerable sum. By the receipt of interest above the expense of carrying it on, and the making a dividend of five or six per cent, with the occasional loss that will happen in the administration of any bank, the idea of a bank working out with any kind of deficiency, is in general most absurd. I would like to know how long it would take to make \$219,000, to stop up this leak in this bank? How many millions upon millions you would have to have of deposits placed there upon which you could make half of one per cent a year to work it out? There came a fall in stocks which rang like a bell, and the whole country heard it; and he must have known it; and, of course, the bank was wrecked; and he finally swears afterwards, it has been insolvent a year, and from March on he knew it ought to be stopped. There has been some suggestion of excuses thrown out, and although it does not belong to this part of the opening of the case for me to go into it now, yet, inasmuch as it has been thrown out by my friend on the other side, I want the Senate to notice two or three things. Mr. Ellis offered as an excuse for not acting after the examination in March first, that there was a law about to be passed—a law in process, a bill being worked through the Legislature about savings banks. That is the first one. Just notice the date, March, 1875, the examination, and May seventeenth the law was passed. That is the first period to which the excuse applied. During that period, from March to May seventeenth, he said that he expected the proposed law would give him aid in the performance of his duty.

I will read the testimony before the committee on page 520 in reference to that: "But it occurred to me that we were then passing a general savings bank act; the bill had been framed and introduced, and it was in the hands of both committees; I had spent considerable time over it, and that bill contained some remarkable provisions,

considering the merging of one bank with another; I made up my mind that it would be better to wait until that bill became a law, having in view the effect it would have on the other savings banks; I was satisfied that that bank would have to be closed."

He thought it was best to wait the passage of that, but he was satisfied the bank would have to be closed. He did not expect the bill would help him any. It might help him about other banks, but not about that. "I made up my mind that it would be better to wait until that bill became a law, having in view the effect it would have on the other savings banks; I was satisfied that that bank would have to be closed." So he was not looking to the bill as intended, to save the depositors of the Third Avenue Savings Bank—that was a gone case at the time he was talking about it—when the bill was pending. He explained himself a little more fully to Mr. Lamb, who said, on page 122 of the Senate testimony, which I will read as follows. He was afraid, if his department was laid open before the Legislature, it would not be passed, as you will see in a moment:

"Q. Will you state what was said and done in that conference? A. I said that I thought the bank ought to be closed up; Mr. Ellis said, in view of pending legislation in respect to savings banks, that he thought it best to wait until the Legislature adjourned."

He did not want to have his department looked after particularly.

Then there was a question asked by Senator Woodin:

"Q. This report that came in in 1875, from those examiners, is the one that showed the large deficiency? A. Yes, sir.

Q. And in that conversation that took place between you and Mr. Ellis, after you suggested the bank should be closed up, he replied that he thought, in view of pending legislation, that proceedings had better not be taken? A. In view of pending legislation in respect of the savings banks.

Q. Did he state, in that conversation, how the pending legislation would affect the question of the solvency or insolvency of that bank? A. No, sir; there was no discussion of the question generally; but I understood that he felt that the closing of this bank at that time might obstruct or become prejudicial to this general savings bank act, which he desired to see passed; it was the effect of closing upon that bill that he apprehended.

Q. Was that the reason assigned by him? A. I don't know that it was stated precisely, but that is what I understood; I don't think it was stated fully and explicitly; that was my understanding of his reasons.

Q. It was not that the bank or banking institution was to derive any advantage? A. No, sir; I did not understand that.

Q. But that the legislation pending might be impeded by the closing of the bank? A. Yes, sir.

Q. Is that the reason? A. So I understand.

Q. How long were you engaged in conversation with him about that report? A. I should not think more than four or five minutes.

Q. And the subject was dismissed? A. Yes, sir.

Q. Have any further conversation with him about it? A. No, sir."

So you see that he and his deputy agreed, the deputy not being so precise as himself, that it was the prejudicial effect of winding this up that ought to be stopped instanter upon the passage of the bill through the Legislature. Members of a legislative body always want to know all about a subject. If there was a skeleton in the office, you wanted to know it, before you passed any more laws in reference to it. A very fine idea was this, to keep still. "If this bill will not go through, we will have the whole thing disturbed and my powers disturbed." He had not investigated other people, and did not want to be investigated himself. If that excuse was good for any thing, it only ran to the seventeenth of May. What happened the seventeenth of May? Had Duncan, Sherman & Co. failed? No, not yet. They had time twice. After the Legislature passed the bill, why did we not hear him firing it off the next moment? Not a bit of it. He waits until Duncan, Sherman & Co. failed on the twenty-seventh of July, and then he goes to New York. He thought he would go down and talk with some financiers—this man that had made up his mind in March that it must be stopped, and that the new bank act would not help it, waited and did not apply it.

Then he marches down to New York in July, some time in the summer, the twenty-seventh day of July; waits from the seventeenth of May to the twenty-seventh of July, when this thing was going on, and where is the excuse about the bill? He goes to New York and talks about the thing, to get advice, and then he comes with the advice he took at a critical moment. The man who had neglected every duty about this thing, at the last moment seeks the advice of some bankers, and put the matter in such a shape as an excuse for neglecting his duty. He went down with his mind made up in March that it ought to be stopped, and did not stop it, but waited until the failure of that banking-house; and then we have all this scheme about meeting these gentlemen and their opinions.

I beg the Senate to observe that Mr. Ellis before the committee named four gentlemen upon whom he called, Mr. Morrison, Mr. Stewart, Mr. Macy, Mr. Cisco; and he not only named them before the committee, but he produced three of them, Mr. Morrison, Mr. Stewart, and Mr. Macy, as witnesses before the committee and they



were there examined, and on this trial we produced Mr. Cisco to make up the four.

I refer to page 522. of the committee testimony.

“Q. State more fully in regard to this merging of banks, the effect upon depositors in other banks, how the merger would affect them? [Objected to. Objection overruled.] A. I went down the last time with a view to settling this question either one way or the other finally; the day I arrived in New York was the day of the failure of Duncan, Sherman & Co.

Q. The delay in not acting upon the Third Avenue Savings Bank until you went down this time, was to see whether any thing could be brought about under this new clause in the law, which was passed that year, in regard to the other banks? A. That was my object, not to save the Third Avenue Savings Bank, because I did not think it could be saved; I made an attempt in that direction, but it was to protect the depositors of the smaller banks; that was the sole object.

Q. You went down to see about the thing finally? A. As I stated, the failure of Duncan, Sherman & Co. took place the day that I arrived in New York; I got there at night, and they failed about 11 o'clock that day.

Q. To settle the question of merger? A. Yes, sir; I probably should not have gone if I had known of the failure; I didn't know it until I got there.

Q. What date was that? A. Their failure, as first reported, was the 27th of July; the next day there was great excitement in New York; very shortly, within a day or two after that, I called on these gentlemen and others who have testified in regard to closing up this bank.

By Senator ST. JOHN:

Q. It was soon after that that you called on Mr. Stewart and Macy and the others? A. Yes, sir.

By Mr. CHAPMAN:

Q. And John J. Cisco? A. Yes, sir.

Q. You called on the men that came before us to testify? A. Yes, sir.

Q. Mr. Morrison; who was he? A. The president of the Manhattan Bank; that is a State bank which represents the State, and pays the interest on the bonds of the State; the State agent, and also where the bank plates are deposited. [All this is objected to.]

The WITNESS. John J. Cisco is another gentleman I called on.

Q. Who was he? A. He was at one time a sub-treasurer in New York, a prominent man, a banker; I called on Mr. Macy, the president of the Seaman's Bank for Savings.

Q. A large institution ? A. Yes, sir ; one of the best.

Q. Mr. Stewart ? A. He was president of the United States Trust Company.

Q. The largest trust company ? A. The largest on this continent, I believe ; I called on several others ; I called on the representative men, representing the different moneyed interests in New York.

Q. On the question of closing up this Third Avenue Savings Bank ? A. Yes, sir ; they all, I believe, with one accord, said it ought not to be done under the circumstances, unless I wanted to injure the other banks, that that would be the general effect."

That is what he says he got from these gentlemen. It was insolvent and they say it ought to be closed. We will see how these gentlemen put this matter themselves, being called by him as witnesses.

John A. Stewart's testimony will be found on page 433 of the committee testimony. He tells what his business is, recollects the call from Mr. Ellis ; and on page 435 you will meet this precise issue :

"Q. In that conversation did he inform you that he had made an examination of the bank and found it insolvent ; or that in substance ? A. That is stating it pretty broadly ; I think he stated, that in his judgment the bank required attention ; I won't say that he said it was insolvent.

Q. Do you recollect of his speaking something of this kind ; that it would have to be closed up, and there were several others that would follow ? A. He did, sir ; and the advice which I gave him was based upon the statement that several others would follow.

Q. And you recollect the fact that after it was closed up several others did follow, don't you ? A. Yes, sir.

Q. About a dozen of them ? A. About a dozen.

Q. Do you recollect of making any suggestion to him in regard to the real estate bringing better prices in the fall, probably ? A. I don't recollect having said to him that I thought it would, though I may have done so.

Q. Do you recollect of saying to him that the effect would not be as disastrous if it was closed up after the summer vacation, when the feeling was somewhat allayed—this excitement ? A. I recollect stating to him that it would perhaps be better to wait until the excitement growing out of the failure of Duncan, Sherman & Co. had in a measure subsided ; I don't think I stated to him that it would be better to defer it until fall, because I don't think fall is generally the best time of the year to proceed to wind up an institution.

Q. You don't recollect making any allusion to the summer vacation one way or the other ? A. I do not.

Q. You could not say that there was no such expression ? A. No,

sir, the idea was that just at that time, when that excitement was prevailing, it might be disastrous for him to proceed summarily to wind up that, to be followed by several other savings banks, and it was in the interests of the depositors generally that the remark was made.

By Mr. OLMSTEAD :

Q. Did Mr. Ellis inform you fully of the condition of this Third Avenue Savings Bank? A. No sir.

Q. Did he exhibit to you any reports made to him or by him relative to that bank at that time? A. He did not, sir.

Q. Did he inform you that on January 1, 1875, the secretary of that bank had made a report to the Bank Department to the effect that there were about \$7,000 surplus money in the bank, and that on March 22, 1875, his own examiners, Mr. Reid and Aldrich, had reported a deficiency of upwards of \$219,000 in that bank? A. No, sir; Mr. Ellis gave me no particulars; the conversation was general; I certainly would not have given any advice where the particulars were presented to me, without considering it.

Q. He did not give you that information; would you have given him the advice to continue that bank if you had known that there was a deficiency in the bank of \$219,000? [Objected to.]

Q. [Question repeated.] Would you have given him the advice to continue that bank if you had known that there was a deficiency in the bank of \$219,000, and would you have advised that it should continue to receive subsequent deposits? A. The latter part of it I can answer unhesitatingly; I would not have advised him to allow them to receive subsequent deposits; in regard to the former, I don't feel competent to answer the question, not having the particulars presented to me at the time.

Q. If you had been conducting the bank, you perhaps would have endeavored to protect the public as much as you can against the consequences of the failure, but you would not have allowed the bank to receive deposits? A. I would not have allowed the bank to receive deposits, upon the statement that you present to my mind.

Q. Would you, or would you not, have considered it your duty, as a Superintendent of the Banking Department, knowing that there was a deficiency in the bank of upward of \$219,000, to have notified the Attorney-General of that fact? [Objected to.] A. I don't feel competent to answer the question what I would have done as superintendent, because I had no experience as Superintendent of the Bank Department, and a man cannot tell what he would do.

Q. Would you have considered it your duty to have notified the proper officers who had charge of closing the bank, of that fact, if you

had known it—the fact that there was a deficiency of upwards of \$219,000 ? A. I think I should have felt it my duty to have wound up the bank if I knew there was a deficiency of \$150,000 ; the only question presented to me—if I am permitted to say by way of explanation—bearing upon this, was, whether that was the proper time to do it or not.

Q. You only gave him general advice, I understand, in such general way as you have mentioned here, that it was his duty, all other things being equal, to do whatever was proper to protect the general banking interests and the depositors ? A. That is it, sir ; the conversation was entirely general, and no particulars given.

Q. If the same general condition of the bank had existed two years previously, that existed at that time, about March, 1872, and that fact had been brought to the knowledge of the Bank Superintendent, would you have thought it proper for him to continue that bank under any circumstances, for two years and six months ? [ Objected to.] A. I would answer that by stating that my impression has been unfavorable in regard to the Third Avenue Savings Bank for two or three years, and that I knew of no special reason why summary steps should be taken just at that time, that had not existed previously:

Q. That is hardly an answer to the question. [ Question repeated. Objected to.]

Q. I show you the report of the examiners of April 14, 1873, and also the report of the examiners of March 22, 1875 ? A. This appears to show a deficiency of \$5,000.

Q. Will you please look over the securities that were held by that bank at that time, and state whether, in your opinion, at that time, in 1873, that bank was in a solvent condition ? [ Objected to, first, that it is not within any of the charges made ; second, that Mr. Ellis is not charged with being negligent prior to the report of March, 1875 ; again it calls for the opinion of the witness as to what he would have done ; again, that it is speculative ; again, that he is not shown to have known other facts bearing upon the question, such as the Supreme Court had passed upon, such as that there had been an examination of five months of this same bank the year before by the bank department ; also, that the examiner who reported this to Mr. Ellis reported that the deposits were increasing and generally in favor of continuing the bank ; that there was an excess of income over expenditure ; that these and other elements may influence his decision if he had known in regard to it. Objections overruled.]

Q. You are familiar with the value of such assets, are you not ? A. I don't wish to call myself an expert in such matters.

By Senator ST. JOHN :

Q. You have a general knowledge ? A. I have a general knowledge ; it is impossible, looking at a report retrospectively, to say what a man would have done under the circumstances ; but with the light which I now have, with this report in my hand, I should say that it would be the duty of the superintendent to close it up ; I see assets here that I think comparatively worthless.

Q. Please look at the report of George W. Reid and W. F. Aldrich, of March 22, 1875, on page 330 of the report of 1875, and answer the same question in regard to that report, taken in connection with the former report ? A. This shows it had not improved.

Q. It shows a large deficiency ; your answer would be the same in regard to this as to the former question ? A. It showed no improvement, rather the reverse ; it shows one item, I observe, that is not in the other, of individual bonds ; I don't know what value is to be attached to that.

Q. You observe a deficiency of \$219,000 and upwards ? A. I observe an apparent deficiency of \$44,000.

Senator ST. JOHN — That is a deficiency of income, and if you look above you will find a deficiency in assets of \$219,000.

The WITNESS — Yes, sir ; I see a decided increase in the deficiency — an increased deficiency in the assets.

Q. Over \$219,000 ; that would be conclusive in your mind, would it not, as to the condition of that bank, taken in connection with the other report ? A. I think there is no doubt of that, sir."

Senator GERARD — Whose testimony was that ?

Mr. TRACY — John A. Stewart's of the United States Trust Company, who was represented by Mr. Ellis in his deposition as having been the man, who, if he had been advised of its insolvency, would have advised him to postpone the closing of the Third Avenue Savings Bank. We will now turn to Mr. Marcy's testimony, on page 464.

"Q. Will you tell what occurred between you and Mr. Ellis, as far as you can recollect it ? A. It was a general conversation ; I remember very distinctly my first reply was to close it up at once.

Q. That was your first suggestion ? A. Yes, sir ; then we got to discussing the interest of the savings banks, which was very large through the State ; the excitement was very large at that time, in regard to their failure ; we discussed as to whether it would be to the interest of the savings banks generally throughout the State to delay it for a short time ; I think that was our conclusion ; to delay it a little while, but not long."

"Q. Did you show him the statement of March 22 and 23, 1875, of the examiners, showing a deficiency of \$219,266.81, at that time ? A.

I do not recollect of our looking over any statement; I was pretty familiar with the bank, and the situation of it.

Q. Was it a subject of general comment in the street among business men? A. No; I do not think it was.

Q. Would you think a savings bank, showing a deficiency of \$219,266.81, was in a condition to continue business? [Objected to.]

A. When the first examination was made by Mr. Howell, he found the bank then in a bad state, and brought the papers immediately down to me, I think the next day; I looked over it then, and had kept the run of it from that time forward; that is why I advised him at once to close it up; but it was not done, because we came to another conclusion.

Q. This conversation that you had with Mr. Ellis was four months after the date of that report of March 22, 1875? A. It might have been.

Q. When did Duncan, Sherman & Co. fail? A. I think the latter part of July.

Q. Would you have considered it proper or right for the trustees of a bank in this city to continue the bank and receive deposits in the bank, after there had been shown to be a deficit of \$219,226.81? [Objected to. Objection withdrawn.] A. No, sir.

By Senator ST. JOHN :

Q. Did you consider it a sound bank, or a good bank to do business with? A. No, sir; I did not."

Now, I will call your attention to the testimony on page 467.

"By Senator ST. JOHN :

Q. Do you think the closing up of this bank would have materially injured or impaired the standing of other good savings banks in any way? A. No, sir; it would not do that."

I call your attention also to some at the top of the page :

"By Senator ST. JOHN :

Q. Would the failure, or the winding up of a savings bank, that had this reputation among business men, of being an unsound bank, would the winding up of such a bank create any great sensation in this market, or would it injure sound banks in your, opinion, to any great extent? A. You should modify that, it strikes me, because those of us that were in the savings bank business, inside the other banks, and knowing it would not affect us, so I said, 'close it up instantly.'"

Mr. Morrison is examined at page 49 of the committee testimony:

“Q. What occurred, as you now recollect it, between you and Mr. Ellis in relation to the matter? A. Two years have elapsed since that time, and it is difficult for a man to remember every word of conversation; I will do the best I can; I will not vouch for the accuracy of every word I say, but I will say as near as my memory permits me; Mr. Ellis did call at the Manhattan Bank, as he was wont to do occasionally from time to time, and found myself and the cashier, and we had a conversation; I recollect of that conversation particularly, because it related to the savings banks.

By Mr. OLMSTEAD:

Q. Can you give the date? A. I cannot give the date.

By Senator ST. JOHN:

Q. It was after the failure of Duncan, Sherman & Co.? A. Yes, sir; that is the only way I can place it; it may be two years ago; it is a long time; I dismissed the matter from my mind; Mr. Ellis had an interview with us, the cashier and myself, in a conversational way, and he stated, I think — I will not state positively the words, but I give you impressions and my memory of what was said — I think Mr. Ellis on that occasion said, that he had been to see one or two gentlemen in Wall street with reference to his position — with reference to the savings banks then being called in question — something to that purport; that he understood there was a panicky feeling in the community, and under these circumstances these gentlemen whom he had seen before coming to us, felt that it was rather a time when caution was necessary, no abrupt act to be done, so as to inflame the feeling that was then existing, the panic growing out of the failure of savings banks and Duncan, Sherman & Co., and others; I think he submitted a question to us something of this kind: Whether it would be expedient and proper policy, beneficial in general, that he should be prompt in winding up the institutions; something of that kind, and I think we gave it to him as our opinion — I speak in the plural number, because I have had a conversation with my cashier this morning, supposing that such a question would be put to me, to see if his memory and mine could be brought near each other, so that if my memory was wrong I wanted it to be right — I think we agreed, myself and the cashier, as to what I am now saying to you — that Mr. Ellis submitted to us the question, first expressing his own opinion in view of what he had heard as to the panicky state of feeling, whether it would be proper to be abrupt, to be prompt or to take any immediate action to close up the savings institutions in the city that required

his attention ; I think that is about all I could say as to what Mr. Ellis said ; now, as to what we said to him : The cashier and I both agreed, this morning, talking the matter over, that we said to him that we could not decide that question, but that it was a panicky time, and in such times it was well not to increase the panic by any immediate action where no loss could occur from a little delay, and that we had no hesitation in saying that where no loss would likely occur by delay, it would be an advantage to the feeling in the community at that time, by way of allaying the feeling that then existed ; I don't know that I could say any more than I have said."

Senators will remember Mr. Cisco came here and was examined. His testimony will be found commencing on page 612 of Senate testimony :

Q. Did you receive a call from Mr. Ellis, Superintendent of the Banking Department of this State, in the summer of 1875 ? A. Yes, sir.

Q. About what time was it ? A. I think it was May or June, 1875, sir.

Q. Was there any conversation between you and him in relation to the Third Avenue Savings Bank ? A. There was a general conversation in relation to that bank.

Q. Will you please state what the conversation was ? A. Mr Ellis said the Third Avenue Savings Bank was somewhat embarrassed, and desired to know from me what the effect would be of closing it up ; I answered him that the community was very much excited at that moment by several failures, and gave him that of Duncan, Sherman & Co., and that it was important he should exercise a wise discretion in relation to what he should do.

Q. Did you tell him, sir, that it would be very inexpedient to close it then ? A. I did not, for the simple reason I did not have any facts before me in relation to the matter.

Q. Repeat that ? A. I did not tell him, for the reason, I say, that I had no facts whatever before me, no figures in relation to it, and I did not, of course, know the condition of the bank.

Q. Did he inform you that the bank was insolvent ? A. He did not, sir ; had he so informed me, I should have regarded it as important that it should be closed up.

Q. Did he inform you that the bank's assets were \$215,000 less than their liabilities ? A. He gave me no figures whatever, sir.

Q. Do you recollect the day of the Duncan, Sherman & Co., failure ? A. I do not recollect the precise day ; I think it was in June, it may have been in May ; I think it was in June.



Q. Do you recollect whether this conversation was before or after the failure of Duucan, Sherman & Co. ? A. It was after.

Q. That was the twenty-seventh day of July ; I believe you had but one interview with Mr. Ellis that summer ? A. But one, sir.

Q. That is set down as having occurred on the twenty-seventh of July ? A. I am not sure of the time ; it was in the summer of 1875.

By Mr. McGUIRE :

Q. Did Mr. Ellis call on you specially in regard to this matter ? A. I suppose that he called with special reference to this matter ; he had not been in the habit of calling at my office ; I have seen him several times before.

Q. Did you have any transactions with him ? A. None whatever ; I never had any transactions of any kind with him.

Cross-examination of Mr. Cisco :

By Mr. McGUIRE :

Q. Mr. Cisco, you do not assume to give the precise language used by Mr. Ellis and yourself at the time, I suppose ? A. I give my remembrance.

Q. The substance, as you now remember ? A. The substance, as I now remember.

Q. Did you know at the time, Mr. Cisco, that the only way the bank could be closed up was for insolvency ? A. I was not aware of it.

Q. Do you know the fact that a corporation can be closed up only for insolvency ? A. I do.

Q. Or for a violation of its charter in some way ? A. We have had a good deal of evidence of that recently.

Q. Does not the fact that Mr. Ellis asked you what to do, stating that the bank was in trouble and your advice to him to proceed with caution, in consequence of the excited state of the public mind, call to your attention the fact that there was talk about the insolvency of the bank ; to put it in another form : If the word " insolvency " was not mentioned, does not the fact that he was talking to you about closing up the bank now call to your mind the fact that there were some words used by Mr. Ellis, conveying to you the impression that the bank was insolvent ? A. The impression conveyed upon my mind was that there was an embarrassment ; there may be an embarrassment without an insolvency." \* \* \* \*

" Q. The simple fact was that the bank was embarrassed, that is, could not go along with its business ? A. That was not stated that it

could not go along with its business, because if it could not go along with its business, it would be closed up at once.

Q. What construction do you put upon the term "embarrassed?"

A. There are many institutions that have been embarrassed, and so have individuals, who have yet overcome their embarrassments; it might have been a temporary embarrassment for a day or a week; when you find this embarrassment with individuals or institutions, they need a little leniency from creditors to carry them over; it may require something of the kind; it may require other things.

Q. Immediately closing up an embarrassed individual or embarrassed institution would be disastrous to the individual or institution?

A. Undoubtedly.

Q. How long did this conversation last between you and Mr. Ellis?

A. It may have been two or three minutes; it was very short.

Q. At this time you had no personal acquaintance with Mr. Ellis?

A. Oh, yes; I had met him upon several occasions.

Q. You never had any business transactions with him? A. No, sir.

Q. Did he state to you at the commencement of that interview that he had come to consult with you as to your judgment about immediate procedure under the circumstances? A. He did not, sir.

Q. In other words, that he wanted your opinion as to the effect of his action; wasn't that it? A. He came in and stated that he had been talking with two or three gentlemen in Wall street in relation to this matter.

Q. That he had talked with other financial men in Wall street? A. And he wished to talk with me.

Q. Wished to know your views, or your opinion, upon the effect upon savings banks or the financial condition of New York? A. I stated that he wished to know the effect which would be produced if he closed up the bank.

Q. You made the reply that you have stated? A. Yes, sir.

Q. In this conversation, lasting for a period of about fifteen minutes, there must have been a good deal said at that time that I suppose you do not now remember; you merely give the result, as you now remember it, of the last interview? A. I am very apt to remember what took place in a conversation of that kind; I say it was not more than fifteen minutes; it may have been much less, but it didn't occupy over that.

Q. But you see, Mr. Cisco, the words you have used would not take more than half a minute, simply the words that you have given, that you and Mr. Ellis spoke; therefore, this must have been an epitome of the whole conversation? A. I differ with you in its not taking more than half a minute; we have been at least fifteen minutes in re-peating.

Q. I say, to repeat what you said, Mr. Ellis asked your opinion as to the effect, and you advised him to exercise a wise discretion? A. It is all I could do; had he told me he had come to consult with me as to his action, I should have required figures, facts, before I should have given a proper opinion.

Q. I do not understand that Mr. Ellis called upon you to get your opinion as to the condition of the Third Avenue Savings Bank; if I understood you correctly, Mr. Cisco, it is that he called upon you to get your judgment as to the effect of closing the Third Avenue Savings Bank upon the moneyed interests of New York? A. I have given you my answer as to that.

Q. You say that Mr. Ellis told you that he called upon two or three gentlemen in Wall street; did he mention those gentlemen's names? A. Yes, sir,

Q. Who? A. John A. Stewart, of the United States Trust Company; William H. Macy, of the Seaman's Savings Bank; those were gentlemen connected with large moneyed institutions; I think they were the only ones he mentioned at that time.

Q. Did he mention Mr. Morrison's name at that time? A. I think not.

Q. The gentlemen whose names he mentioned were gentlemen connected with large moneyed institutions in the city? A. Yes, sir; Mr. Stewart's is the largest in the country.

By Senator ST. JOHN:

Q. It is in evidence that this bank was examined by Messrs. Reid and Aldrich, examiners of the Bank Department, in March, 1875, some months before this conversation you had with Mr. Ellis; they reported at that time a deficiency of assets of \$219,261.81, and a deficiency of income of \$44,791; I want to ask you, if the figures of that report had been shown to you, and your opinion had been asked as to the advisability of keeping this bank along and bridging it over, as it is talked about, or winding it up, what would you have said? A. I would have said it was his duty to wind it up immediately.

Examination continued:

By Mr. McGUIRE:

Q. Would you, Mr. Cisco, have advised the superintendent to have wound it up immediately if you had been satisfied that it would have caused a run upon all the savings banks of the city of New York? A. Well, sir, I do not think it would have produced any such effect.

Q. I am asking a hypothetical question; If you had been satisfied that it would have produced a run upon the savings banks of the city

of New York, would you then have advised the closing of the bank, if you had knowledge of these figures? A. That is a question, sir, which I do not think I am called upon to answer; if I had been in his position I should have exercised, as I say, a wise discretion.

Q. By producing such a state of things as you state, a run upon all the savings banks, you may produce a greater calamity than the mere loss of that bank? A. That is the very question, if you have looked at the subject or given it any thought, that Mr. Ellis, as at the head of the Bank Department of this state, that was the very question that he was to determine, what effect it would have upon the public interest if he did close it up; I do not believe it would have had any such effect.

Q. That is a mere matter of opinion? A. You were asking my opinion.

By Mr. TRACY:

Q. Mr. Cisco, you have been in New York when there has been a run upon the savings banks? A. Oh, yes, sir.

Q. In those cases, did it become general to all savings banks? A. It did not, sir.

Q. Did such a run as that upon one or more savings banks effect Wall street in the great monetary transactions? A. Not greatly, sir; of course it produced some little excitement; a mere ripple."

This gentleman goes to New York and attempts to find out how not to do it, and acts directly contrary to the advice of these gentlemen.

Now, then, we have this gentleman's excuses from March to May, three months, that he wanted to have a bill passed, to keep the ear of the Legislature from hearing any rumors of explosions, of war, of tumults; and, when the bill was passed, saying before that bill was going to have no sort of operation on the Third Avenue Savings Bank, and then dropping back into his quiet nap again, letting it go along until this late day, the latter part of July, a long period again, and then he goes to New York, and goes seeking around among the four eminent, wise, good men to get some sort of thing out of them, that he could say afterwards that he took the advice of these men. Was he the Superintendent of the Bank Department, or was he a simple country fellow, who was going down there to ask men to give him their advice? Does he take this office because he does not understand its duties and must go 150 miles to ask somebody for their advice? Were there no bankers in Albany as famous as there were in New York? Now, you will see that these gentlemen are not in the habit of giving advice, except upon the statements of facts, and if he had told one of them that the bank was insolvent, and hopelessly

insolvent, every one of them would have told him to wind it up, to stop taking deposits instantly, by his orders. Yet he repeats<sup>f</sup> in his testimony as to what they said in the conversation, a remarkable contradiction between Mr. Cisco on the stand and Mr. Ellis on the stand, as they appear here before the committee. We have got down to that period of July twenty-seventh, and the Third Avenue Savings Bank is still being managed by these gentlemen, unscathed in any way.

Senator STARBUCK — Mr. President, I desire to make a suggestion. I know how laborious it is to counsel, to occupy a long time in a speech without recess—the counsel has been up about three hours—and it is now two o'clock, and, if the counsel desires, I trust we shall take a recess.

Mr. TRACY — I beg to say that I had as leave go a little further on this subject. Now then, what happens when he comes home, nothing? The time had gone by; the Legislature had not been alarmed; the Duncan, Sherman & Co. excitement had gone by, and the bank was going on in its robbery of the poor and the superintendent was silent. Now then, I say upon this subject, if the bank had not stopped who would have stopped it; would it not have been going on to this day, if they could have kept money enough together to keep the machine running, and pay Carman, the secretary, his salary? What would start this man? What earthly thing would put him in motion? It seems nothing will. The bank goes on until it gets to be in a penniless condition—the money was all absorbed, and then the trustees thought it best to stop and put Carman in a better way of getting pay—making him receiver of the whole concern. Where the money had gone it is not material for us to inquire now. There is a further excuse, that there was an apprehension of a general panic. It is perfectly absurd and unfounded. They could have resorted to the sixty day clause; it is a protection; that sixty day clause is a thing convenient and useful in an institution of numerous depositors, as many of the securities cannot be realized upon in a moment, a large line of depositors of that sort would have to wait to withdraw their money, and sixty days is given as time to do it, and therefore a run, if a bank is good, is not a serious thing. They can take the sixty days time and have time to engineer their affairs so as to be in a condition to meet it.

If the Senate please, in regard to the Third Avenue Savings Bank, which is somewhat like the others that follow, I have made a little summary of it like this: Mr. Ellis had notice of its deficit, and of the unsalable bonds in it in April, 1873, soon after he came into office. In July he had notice from Mr. Smith, his head clerk, by tabulations, that the report of the January previous was a fraud, and

that the report of July was a fraud, and that the condition of the bank was bad. And yet he did nothing until the regular examination of 1875, when he found the increased deficits and irregular, illegal practices of all kinds. He did nothing until September, 1875, when the trustees came to Albany, and applied for a receiver, and that the whole thing was put in the hands of Carman, the secretary, who was unworthy of the trust, and thrust out of it by a righteous judge the moment he had an opportunity so to do. I do not know what name to characterize it by. I think in one of the resolutions here, the question has been submitted whether it is "culpable negligence." Well, all negligence is more or less culpable. I have no right to neglect any duty of mine. If I neglect a mere duty of hospitality, of civility, of speaking to a man in the street, it is a very simple thing. If I neglect to render him aid, to lend him my spare cloak in a storm when he is out, to invite him to food when he is hungry, then I have neglected a serious duty. If I stand by and see the poor robbed by a set of villains and know all about what they are and what they are doing for a series of months, I beg, in Heaven's name, to know what kind of negligence that is. Nobody is on trial for any crime. What does culpability mean? It is all negligence, that is blameworthy negligence, more or less. If I should violate the courtesy of speaking to a lady when she bows to me; if I should violate some rule of propriety in dressing myself in coming before the court, in practicing in a roundabout or short sleeves, you would say that is a summary of it; but, if I should neglect a duty for a client, for whom I am retained, or, perhaps, assigned by the court as his lawyer, if his life or liberty is in peril, for not doing every thing that is in my power to do, then I say I have been guilty of a gross negligence. The Governor in a most generous spirit, says: "Mr. Ellis came to me and made his explanation, and I feel satisfied that he did not mean any thing wrong — criminal — but I do not feel satisfied that he was not guilty of gross negligence," and I think the executive in that case spoke the voice of the whole people of the State of New York. There is no getting around it. It is an office not fulfilled and the official ought not to fill the place.

Now, they come to the report to the Legislature following, of this year, after it has all been gathered up, with Carman in and Carman out. He comes with that smooth report, saying: "In 1875, I had it examined, and found it bad, and I, therefore, put it in the hands of the Attorney-General, to be closed up," instead of saying, "In March, 1875, I found it bad, and I dallied with it until it could not go any longer, and dropped down dead, and then I put it in the hands of the sexton, six months afterwards." That would have been a true report about it. I need not speak of what a wreck there was of those that

suffered by this thing. You can all understand that these poor people must have been disheartened and discouraged by this abominable action of the Superintendent of the Bank Department.

I have nothing further to offer upon the subject of the Third Avenue Savings Bank.

Senator STARBUCK — Mr. President, I renew my motion that we take a recess till 4 P. M.

The President submitted the question on the motion of the Senator from the Eighteenth, and it was decided in the affirmative.

The Senate hereupon took a recess until 4 P. M.

SARATOGA SPRINGS, *August 17, 1877* — 4 P. M.

The Senate met pursuant to adjournment.

Mr. TRACY — Mr. President, having stated the case of the people in reference to the Third Avenue Savings Bank, and having made much of the argument of the whole case, it is necessary still to open on the other nine institutions by briefly calling the attention of the Senators to the passages of the testimony upon the brief which we have prepared, that they may see the evidence, and have their attention particularly called to it; and if no objection is made, my associate, Mr. Olmstead, will perform that part of it in my stead.

Mr. OLMSTEAD — Mr. President, I beg first to direct the attention of the Senate to 'The Traders' Savings Bank, which is one of the institutions named upon brief.

I shall endeavor to be as concise as possible, my purpose being simply to call the attention of the Senate to the salient points in the printed brief in relation to each bank, so that it may be understood what the charges on the part of the prosecution against Mr. Ellis are.

The documents to be presented are nearly all taken from the records of the Bank Department, and we shall thus give to the Senate the information which the superintendent himself was possessed of.

We first refer on this brief to the report made by Mr. Reid, a bank examiner, December 9th, 1873. I may say here for the convenience of the Senate, that the testimony taken before the committee, in respect to this bank, is all contained upon pages 273 to 279, and the testimony taken before the Senate, on pages 138 to 216 and 227 to 231, that is, exclusive of such testimony as Mr. Ellis may have given during the latter part of his examination, which we have not received from the printer.

In respect to that first report, the Senate will observe it is stated that a letter is written by Mr. Reid, in which he calls the surplus an "apparent surplus." That letter will be found on page 140 of the "Senate testimony." I will read that letter and the commission signed by Mr. Ellis, dated November 26th, 1873.

"BANK DEPARTMENT,  
ALBANY, *November 26, 1873.*" }

Pursuant to the authority conferred and the duty imposed upon the Superintendent of the Banking Department, by chapter 693 of the Laws of 1871, I do hereby appoint George W. Reid, Esq., to examine into the condition, working and affairs generally of the Traders' Savings Bank, New York, and report thereon to me in detail as soon as practicable.

Given under my hand and official seal, at Albany, the day and year first above written.

D. C. ELLIS,  
*Superintendent.*"

"Hon. D. C. ELLIS, *Superintendent Bank Department* :

SIR.—The undersigned, appointed to examine into the condition, working, etc., of the Trades Savings Bank of New York, reports :

Last spring the trustees concluded to wind up the affairs of this bank and had paid the depositors down to about \$1,100, when some of them resigned, and were succeeded by the present officers, who have, by energy and perseverance, raised the deposits to nearly \$29,000.

The president, who is said to own considerable property, says he is determined to make the bank a success. The promise of seven per cent interest to depositors, the issue of "coupon certificates of deposit" and all other extraordinary measures are to be abandoned, and every thing in future to be done upon strict business principles.

From the statement of assets it will be seen that there is an apparent surplus of \$2,220, and the trustees will pay any deficiency there may, be in meeting the expenses.

"Respectfully submitted,  
"GEO. W. REID."

Examined December ninth.

The letter accompanies the report.

The next report which appears in the department is the report of January 1st, 1874, showing, according to the statement of the bank, a



surplus of assets of \$4,379.10. Now, we do not know that any thing special was brought to the knowledge of Mr. Ellis, in respect to this bank, except the statement of the "apparent surplus," until we come down to the letter written to him by Mr. Reid, dated February 5th, 1874, which is on page 343 of the Senate testimony. I will read it:

"NEW YORK, *February 5, 1874.*

"Hon. D. C. ELLIS, *Superintendent* :

DEAR SIR.—Night before last the trustees of the 'Trades' Savings Bank removed Secretary Freese and put in Mr. Newton, one of Le Barron's clerk's. Freese and his friends called in a policeman and gave the safe, etc., in his charge.

Yesterday I visited the bank and found the Le Barron party and the police in the bank and Freese and his counsel up-stairs. Freese had an affidavit partly drawn, making serious charges against L. B. that he had attempted to use the funds of the bank in an improper manner, made propositions to him to divide the use of the funds to a certain extent between them, etc., etc., which proposition he rejected. This affidavit was to be placed in my hands to send to you. When L. B. 'purchased the bank' (with only about \$800 due the depositors) he paid McClave, the former president, \$2,100, taking an assignment from him individually of the lease, safe and fixtures. Two thirds of this property Le B. afterwards transferred to Freese for the same amount of money, and gave him the position of secretary. This money Freese now wishes to get back, and hesitates about giving the 'affidavit,' saying he is ready to give his testimony when called upon.

Freese appears to have been working in the interest of the depositors, thinking he could restrain Le Barron, but he has compromised himself by his representations to me, as to the management of the bank and in his reports to the department.

If you consider it 'unsafe or inexpedient' for the bank to continue to transact business, (act of April 15, 1871), can you turn it over to the Attorney-General, or will it require further action here?

There is \$20,000 on deposit in the Hanover National Bank, subject to be drawn on the signature of the president and secretary, and \$1,347 in the N. Y. S. Loan and Trust Co., which can be drawn by the president alone.

The loans of \$15,500, in B. M., were made by Le B. without the action of the board, as required by section 6 of the charter and, from what I now learn, were for the benefit of Le B.

There is about \$5,700 cash in the safe, and \$2,300 in checks, said to be good, making assets \$44,847, with safe, furniture, etc., to pay \$47,000 deposits.

“Yours, truly,

“GEO. W. REID.

P. S.—Mr. Aldrich *wishes me* to say that if a receiver is appointed, he would like to be the man.”

Notwithstanding that letter of February 5th, 1874, Mr. Ellis did nothing at all; and we come to the report of January 1, 1875, by the bank, showing a surplus of assets of \$1,933.69. That will be found in the Senate testimony, page 147. By reference to that report, it will be seen that the fixtures were put in at \$7,148.96. Those same fixtures were put in at a subsequent report, January 13, 1876, by Mr. Reid, when he made another examination, at \$2,000; and the Senate can see very clearly that, if that had been rated at the same value in that report, there would have been quite a deficiency instead of a surplus. The excess of valuation of fixtures permits the surplus to be stated.

We now come to the report of Mr. Reid, who examined the bank November 12, 1875, and I beg to call the attention of the Senate to the fact that that was a regular examination, not a special examination, authorized by the superintendent, but a regular examination. That is made, of course, once in two years. And I call the attention of the Senate to the fact that, between December 9, 1873, when that apparent surplus appears, and this report, especially this report by Mr. Reid, of November 12, 1875, Mr. Ellis had done nothing at all, notwithstanding that letter of Mr. Reid to him of February 5, 1874.

We now come to the examination by Mr. Reid, of November 12, 1875. He shows a deficiency of assets of \$6,538.29, and a deficiency of income of \$1,425.75. The usual letter was annexed. The fixtures were put in at \$4,000, instead of \$7,000.

I may say that this report was filed—in order to be fair to the superintendent—December 2, 1875, and I have no evidence that it was received by the department before the date of its filing; but at any rate, however that may be, the first thing we find Mr. Ellis doing in respect to this bank is, that he wrote a letter to Mr. Lesley, the president of the bank, dated December 25, 1875. It reads as follows:

“ALBANY, December 25, 1875.

“ALEXANDER M. LESLEY, ESQ., *President Trades' Savings Bank, New York City:*

DEAR SIR.—The report of the examination of your bank shows that there is a deficiency of assets with which to meet its liabilities.

The settled policy of the department is to close up all such banks, unless the deficiency is made good at once. Your immediate attention is called to this matter, with the hope that you will be able to put your institution on a sound footing before the first of January.

D. C. ELLIS,  
*Superintendent."*

A telegram came back from Mr. Freese to Mr. Ellis, which is upon the committee testimony, at page 286. It seems there had been a telegram previously sent to Mr. Freese.

"NEW YORK, December 31, 1875.

DE WITT C. ELLIS, *Superintendent :*

Telegram received. Every thing fixed up as proposed.

I. M. FREESE,  
*Secretary."*

All we have to say in regard to that matter is that the matter was not fixed up, and that Mr. Ellis took no pains to inform himself whether it was fixed up or not. Notwithstanding the false reports previously made, he took that telegram as true, and relied upon it and upon the statements of the trustees.

The next thing that appears in regard to this bank is the report of the bank of January 1, 1876, in which they make, as usual, a surplus of assets of \$1,469.58, notwithstanding Mr. Reid had shown a large deficiency. But with the assets taken at par value, the surplus would be \$458.58; so the bank says. The fixtures were put in at \$7,996.49, notwithstanding Mr. Reid had in November previous valued them at \$4,000. Had the latter valuation been given in the report, it would have shown a deficiency.

Senator GERARD—What were the fixtures put in at in the present report ?

Mr. OLMSTEAD—Seven thousand nine hundred and ninety-six dollars and forty-nine cents.

Mr. CHAPMAN—That is the report of the bank ?

Mr. OLMSTEAD—Yes, sir; the report of the bank of January 1, 1875, put in the fixtures at \$7,996.49, while Mr. Reid, who examined the bank the following January, that is, November 12, 1875, put these fixtures in at \$4,000; therefore the Senate can see if the fixtures in this last report of the Bank Department had been put in at the price they were put in at by Mr. Reid, there would have been a deficiency; but that seems to have been overlooked at the department.

But the point that I wish to call the attention of the Senate particularly to in regard to this matter is the manner in which

the surplus was arrived at, and the history of it is just this: The bank had a piece of property in Beach street, which appeared upon the books at the value of \$15,000. That was the cost price, I think; at any rate, that was the valuation as it appeared upon the books. In order to make up the deficiency the bank made a pretended sale of that property—fictitious sale—to one John Mulvaney for a sum of \$28,000; in order to get the difference between \$15,000 and 28,000 the money was to be paid, one-fourth in cash, and three-fourths in bond and mortgages. That one fourth in cash seems to have been \$7,250, and a bond and mortgage a little over \$21,000.

By Mr. McGUIRE:

Q. What time does the witness allude to that he made the discovery?

Mr. OLMSTEAD—We will find out.

Mr. McGUIRE—Mr. President, I object; the witness stated he did not find out the facts until after the bank was handed over to the Attorney-General; what he found after that time I object to as immaterial.

Mr. OLMSTEAD—Mr. President, I asked him what the fact was that Mr. Reid discovered in respect to this Mulvaney mortgage.

Mr. McGUIRE—The preceding question was, what time did you discover the fact in regard to the Mulvaney mortgage? The witness discovered it not until after the bank was handed over to the Attorney-General; then follows the question, what were the facts? Mr. President, the ground of the objection is this, that by no possibility can Mr. Ellis be chargeable with any knowledge of this Mulvaney mortgage, such as Mr. Reid acquired after the superintendent gave the Attorney-General the notice.

Mr. TRACY—There are two points of inquiry investigated in all this business we have to look after in conducting this thing; one is information reaching the department, and the other is the fact itself. What is the insolvency, the bad management, the vicious condition of any one of these banks is a substantive matter of inquiry here in every case, and has been allowed by the Senate to proceed, and the amount of interest which the superintendent had is perhaps to be inferred from the evidence already put in evidence. Mr. Reid says he always suspected there was something wrong about the mortgage, and we ask now what the real facts about the mortgage were. We want to show that the bank was insolvent or desperate, and also to show notice to the superintendent. This question is, what were the facts about the Mulvaney mortgage? The Senate desires, of course, to know what the facts were; if this man knows, he is a man by whom we can show it.

The president submitted the question to the Senate whether the testimony should be admitted, and it was decided in the affirmative.

Q. Proceed, Mr. Reid, and state what the facts were in regard to that Mulvaney mortgage? A. In order to make up a good statement for January, 1876, they appeared to have transferred the Beach street houses, so called, to this man Mulvaney.

Mr. McGUIRE—Mr. President, I object to what seemed to ‘appear’ to the witness; he is asked to state facts.

The PRESIDENT—The witness will state the facts.

The WITNESS [continuing]—They pretended to have sold this property.

Mr. McGUIRE—I object to that answer.

The WITNESS—They had a mortgage signed by a man by the name of Mulvaney for \$21,375, I think that was the amount on the Beach street house; they had a mortgage for \$21,375 on the Beach street house, which they had owned for some time; they stated to me that they had sold the Beach street house and received this mortgage, and they sold it for \$28,000; received this mortgage and the balance in cash.

Q. How much was the cash that they told you they had received?

A. That would be \$6,625; I think it was \$21,375.

Q. The bond and mortgage as how much? A. Twenty-one thousand three hundred and seventy-five dollars; I am not certain whether they sold it for \$28,000 or \$28,500, I am under the impression it was \$28,500, for I think it was \$7,000 and over that they stated they had received.

Q. Do you know how much that property was rated at on the books; the cost price at the bank? A. When I made the examination at the time I think it was about \$15,000.

Q. It was sold for \$28,000, as you understood, and a mortgage of about \$28,000 also given back, and cash reported to have been paid something like \$7,000? A. Yes, sir.

Q. Did you make inquiry at the bank for that cash? A. Yes, sir.

Q. Did you find it? A. I could not find the entries made in a proper manner.

Q. Was the cash produced before you in any way? A. Oh, no; it would not be, of course; if they had received it, it would have gone into the cash.

Q. Did you see the mortgages? A. No, sir; they said they had gone for record; I think I saw the bond.

Q. Did you get any information from the trustees of that institution in respect to the validity of those mortgages at any time? A. No, sir.

Q. Have you stated now all the information you have in respect to that mortgage? A. I believe I have.

Q. That mortgage formed a part of the assets of the bank, according to the report of January 1, 1876? A. It did."

That is a matter we will come to very soon, but the fact is that sale never was made, and this bond and mortgage was entered on the books as \$21,000, in order to make up the difference between \$15,000 and \$21,000; in order that there might appear a surplus upon the books.

Mr. Reid writes to Mr. Ellis that he was unable to find the \$7,000 of the bank and it was never found and has not been found to this day, and the bond and mortgage was a fictitious bond and mortgage. On page 185 of the Senate testimony, is the testimony about this Mulvaney mortgage. Mr. Reid was examined and testified:

"Q. What were the facts which you discovered in regard to that Mulvaney mortgage? A. Mr. Freese acknowledged to me that it was, as I had always suspected, a bogus transfer, never sold, that is, for a consideration.

Q. And the surplus as shown by the report of the bank on that date was \$1,459.88; you examined the bank on January 13, 1876? A. I did."

There were some mortgages subsequently put into the concern which were said to be good mortgages, which the Senate will remember were called the "Livingston mortgages," in lieu of the Mulvaney mortgage, but here is an entry upon the records of the department which shows the character of that transaction. It is a resolution which will be found on page 646 of the Senate testimony.

"Minutes of the board July 11, 1876, the roll being called, a quorum being present, consisting of the following: Alex. M. Lesley Peter Dooley, James M. Waller, H. Duchardt, C. D. Duncan, J. M. Freese.

Moved and seconded that the Mulvaney mortgages on the house and lot No. 17 Beach street, be satisfied in consideration of the receipt of \$10,000 in cash, and the following mortgages of Alexander M. Lesley for \$15,000. Carried."

That is all there appears to be in that transaction. Of course a proper investigation must have shown what its nature was. Mr. Reid, in fact, acquainted himself with all the facts as we shall show as we proceed, and informed Mr. Ellis of them, too.

We now call the attention of the Senate to the letter of January, 1876, written by Mr. Reid to Mr. Ellis, on page 157 of the "Senate testimony: "

"NEW YORK, Jan. 4, 1876.

"Hon. D. C. ELLIS:

DEAR SIR. — This morning I received the *Excelsior*; found that the Dist. of Col. bonds had been sold, and that the trustees had put in cash enough to wipe out every thing doubtful, and to give them a surplus of \$4,936 — and all the assets first class. The deficiency of income is about \$1,350, but De Witt says the trustees will pay all expenses. The deposits have been drawn down \$95,000 since November 17, being now only \$36,000, including January interest. I then went to the Trades — Freese said *he* had paid in \$7,000 cash, and every thing was all right. I asked to see the entries — he said they had not been made yet, but would be in a few days, as soon as they could write up the books. I then asked to see what made up the \$10,000 cash in the daily statement, *he refused*, giving the same reason that the books were not yet 'written up.' He also refused to show me the minutes of the trustees' meetings, but admitted that they had adjourned the last meeting without recording the names or voting a dividend. He wished me *not* to write to you how I found things, but to wait a few days and then make an examination to test the accuracy of his annual report. I do not believe that the money has been or can be paid in, and I told him so. Leslie was not in. The deposits appear in the statement to be drawn down to \$12,000.

Sec'y Smith of the Clinton says the trustees have paid in the cash for the \$4,700 trustees' notes, so that they will not appear in their report. The deposits have been drawn down to \$146,000.

The Bowery opened 400 new accounts on Saturday and 250 yesterday, making over 1,000 in ten days, refusing all large amounts, no one being allowed to deposit more than \$500. I have inquiries from two or three safe deposit companies for blanks for the Jan'y report, and also when they are to be examined, etc. Do you intend to send them any blanks for this month? Have heard nothing from the German of Morrisania, except from your letter.

To-morrow (Wednesday) I expect to go to Dobb's Ferry to examine the Greenburgh Savings Bank.

Yours truly,

GEORGE W. REID."

The next matter upon the brief is the report of Mr. Reid, January 13, 1876. It does not appear that was made on the requisition of Mr. Ellis. It seems to have been done on Mr. Reid's own motion. That shows a surplus of assets on the statement made by Mr. Reid of \$2,442.34. Accompanying that report was a letter of Mr. Reid, charging fraudulent transactions, which I will read :

ASSETS AND LIABILITIES of the *Trades' Savings Bank, New York*, upon the 13th day of January, 1876, as found upon examination made by the direction and authority of the Superintendent of the Bank Department.

	Rate of Interest.	Amount at par.	MARKET VALUE.		Totals.
			Rate.	Amount.	
Bonds and mortgages.....	7	.....	.....	.....	\$55,375 00
Call loans on bonds and mortgages, town and United States bonds.....		.....	.....	.....	11,200 00
Buffalo city bonds.....	7	\$14,000 00	105	\$15,225 00	
Long Island City bonds.....	7	7,000 00	100	7,000 00	
Cash in safe.....		.....	.....	\$6,616 00	22,225 00
Cash in Grocers' Bank.....		.....	.....	4,781 00	
Safe and fixtures.....		.....	.....	.....	11,397 92
Interest accrued.....		.....	.....	.....	2,000 00
					675 00
					\$102,872 92
LIABILITIES.					
Due depositors.....		.....	.....	\$100,320 58	
Interest accrued.....		.....	.....	120 00	100,440 58
Surplus.....		.....	.....	.....	\$2,442 34



## INCOME.

Bonds and mortgages.....	....	\$55,375 00	....	\$3,876 25
Call loans.....	....	11,200 00	....	784 00
City bonds .....	....	21,500 00	....	1,505 00
Cash in bank .....	....	4,781 00	....	191 24
				\$6,326 49

## CHARGES.

Interest to depositors.....	....	....	....	\$4,450 00
Salaries.....	....	....	....	988 00
Internal revenue tax.....	....	....	....	125 00
All other charges.....	....	....	....	150 00
				5,713 00
Excess.....	....	....	....	\$643 49

Examined November 14, 1875; re-examined January 13, 1876.

GEO. W. REID.

"NEW YORK, *January 13, 1876.*

"HON. D. C. ELLIS :

DEAR SIR.—Inclosed I hand you statement of assets, etc., of Trades' Savings Bank re-examined this morning; I found a pencil memorandum of meeting of trustees *January first, seven* present, with resolution authorizing payment of six per cent dividend, also confirming sale of Beach street house for \$28,500, one-fourth cash, and the balance bond and mortgage. When I was at the bank *January fourth*, Freese said 'they had *not* had a meeting for want of a quorum, but would soon have one,' he now says he was excited and hardly knew what he was saying. The entries in the cash-book for thirty-first December are evidently made very recently 'after they had time to write them up,' as Freese said.

The bond for the balance of the Beach street house, \$21,375, is signed by John Mulvany for five years from December fifteenth, the mortgage said to be at clerk's office for record. Leslie was not in, but Freese says every thing has been done in good faith; perhaps so, but the entries in the books are not clear enough to convince me. Leslie is not to receive any rent for the banking room.

If the bonds and mortgages are good for the amount, there will be a small surplus counting the safe and fixtures at \$2,000, with an excess of income, \$643.

Yours truly,  
GEORGE W. REID."

"EXHIBIT No. 20.

NEW YORK, *January 19, 1876.*

HON. D. C. ELLIS :

DEAR SIR.—Yesterday I went up to the Trades, but Leslie and Freese were both out. In looking over the books I could find nothing to show that the trustees have put in a dollar toward the deficiency, which has been almost entirely made up from the enhanced price put upon the Beach street property. Since my examination, November twelve, \$3,130 has been charged as paid in it, and the account stood at \$16,483.29, when the account was closed December thirty-one. There is no entry in cash-book of \$7,125, which, with the \$21,375 B. and M., was to make up the price for which the house was said to be sold. I am not surprised at discovering these facts, as I believed at the time that the sale was a *sham*, and that Freese's statement that the deficiency had been paid by the trustees; about meetings of trustees, etc., etc., all false. There are payments of interest on bond and mortgage entered in cash, December thirty-one, that may have been paid by Lesley, for I think the loans were made for his benefit.

Assets as per examination January thirteen.....	\$102,872 92
Deduct B. and M.....	21,375 00
	<hr/>
	\$81,477 92
Add Beach street house.....	16,483 29
	<hr/>
	\$97,981 21
Leaving deficiency of.....	2,459 37
	<hr/>
Liabilities.....	<u>\$100,440 58</u>

The Mechanics and Traders' have taken notice from depositors for about \$150,000, the time expiring early in February. Fisher says they have over \$200,000 in cash ready for them, but he is very anxious as to the result. Conklin says he thinks very little will be drawn. These reports will be 'in shape' early next week, and they wish me to call and see it before completed. I will send reports in trust companies and four or five savings banks in a few days, and the balance (about a dozen) early in February. I suppose you saw the statement in the Tribune of this day, in relation to Schuyler's confirmation, and as to *republicans holding over*.

Yours truly,

GEORGE W. REID."

By reference to page 170 of the Senate testimony, it will be seen that Mr. Ellis saw these matters.

"Q. Then he must have seen the letters of February 5, 1874, and of January 4, 13 and 19, 1876, about the time when they were received? A. I have no doubt that he saw all of those letters."

Mr. Ellis did nothing; he let the bank go until July 27, 1876 when he went off to New England. He paid no further attention to this bank; he never paid any attention to it, and on August 2, 1876, Mr. Reid being still very solicitous about this bank, writes a letter to Mr. Lamb, dated August 2, 1876, which shows the bank was in a very bad condition.

Mr. Reid wrote as follows to Mr. Lamb:

"NEW YORK, August 2, 1876.

"MY DEAR LAMB.—On my arrival from the 'Centennial' this morning I found yours of the twenty-ninth July, and went up to the Trades. Freese seemed rather disposed to put me off, saying that the books were not posted, etc., etc. On telling him that you had requested, he wanted to see what you had written; and in reading it I skipped over your remark about the advertisements, and 'I think to fail,' but he was looking over my shoulder and it caught his eye. He quite ob-

jects to your remark, and says you have no cause for saying he would 'cheat the depositors,' etc. I told him it was a very natural conclusion, knowing as you did about the sale of Beach street property for the supposed bogus mortgage. He rather stands upon his dignity, and said he would require the 'commission,' but finally concluded he would come down and see me in the morning with Mr. Leslie, the president. Every thing appears about as it was at the July report. The Long Island City \$7,000 bonds have been sold at ninety-five, which would reduce the surplus \$350. Freese says the interest has been paid on the \$21,375 B. and M., *but it is not in the cash-book.* His account and the president's do not agree upon some points as to the conduct of the bank, and they are to see me about those differences to-morrow. I hope to get off for Oswego on Monday.

Truly yours,

GEO. W. REID."

Mr. Lamb issues a commission immediately to Mr. Reid to examine the bank, which is dated August 3, 1876 :

"BANK DEPARTMENT,  
ALBANY, August 3, 1876.

GEO. W. REID, *Examiner* :

SIR.—Pursuant to the authority given by chapter 371 of the Laws of 1875, I do hereby authorize and direct you to examine into the condition, assets, workings and affairs generally of the Trades' Savings Bank. I especially direct you to investigate the real estate, transactions of said bank in order to ascertain whether they have been completed as they have been reported to the department.

HENRY L. LAMB,  
*Dep. Supt.*"

Mr. Lamb could not act until Mr. Ellis went away, as the Senate is aware. Mr. Reid made the report of August 9, 1876. That report is on pages 166, 167 of the Senate testimony, which I will read :

ASSETS AND LIABILITIES of the *Trades' Savings Bank of New York* upon the 9th day of August, 1876, as found upon examination made by the direction and authority of the Superintendent of the Bank Department.

	Rate of Interest.	Amount at Par.	MARKET VALUE.		Totals.
			Rate.	Amount.	
Bond and mortgage, C. Bolles, Eighty-third street, interest from May 1.....	....	*\$9,000 00	....	.....	
Bond and mortgage, C. Bolles, Eighty-third street, interest from May 1.....	....	8,000 00	....	.....	
Bond and mortgage, C. Bolles, Eighty-third street interest from May 1.....	....	5,000 00	....	.....	
Bond, Michael Grace, Greenpoint (two).....	....	6,000 00	....	.....	
Bond, Wm. Atwater, 237 Bedford avenue, Br. ....	....	†6,000 00	....	.....	
Bond, Alexander M. Leslie, Beach street (two) .....	....	†15,000 00	....	.....	\$49,000 00
Call loan on United States bonds.....	....	.....	....	.....	250 00
F. Kingman, receipt for I. R. Freese, bond and mortgage, \$10,000, January 16, 1875, loan to E. B. Newbern, April 26, 1875.....	....	.....	....	.....	5,000 00
Safe and fixtures.....	....	.....	....	.....	2,000 00
United States stamps.....	....	.....	....	.....	330 90
Cash, safe.....	....	.....	....	\$2,659 83	
Cash, Grocers' Bank.....	....	.....	....	24,954 54	
					28,614 37

## ASSETS AND LIABILITIES — (Continued).

	Rate of interest.	Amount at Par.	MARKET VALUE.		Totals.
			Rate.	Amount.	
Rent due.....	....	.....	....	.....	\$680 83
Overdrafts, good.....	....	.....	....	.....	868 14
Interest accrued.....	....	.....	....	.....	1,496 00
					\$88,439 34
LIABILITIES.					
Due Depositors.....	....	88,178 67	....	.....	88,378 67
Interest accrued.....	....	200 00	....	.....	
		.....	....	.....	\$60 67
Surplus .....	....	.....	....	.....	

\* Assigned by Leslie to I. W. Freese.

† Owned by rank ; no title shown.

# Not recorded ; no title shown.

GEORGE W. REID.

And he shows there is a surplus of sixty dollars and sixty-seven cents, excluding the \$1,000 bond and mortgage to which no title was shown in the bank, and he calls attention to the Lesley mortgage. As soon as Mr. Lamb received that, on August 14th, he writes to the Attorney-General for an injunction, and the bank was closed. Mr. Ellis never got back to his office until the whole business was done; and that is, substantially, the history of the Trades' Savings Bank.

In order to explain what occurred afterwards, I should state there was an injunction issued, as there usually is, and the proceedings were stayed a little while. Some attorney of the bank came up to the Bank Department and tried to have these proceedings postponed; and it was postponed a few days; in the meantime the bank was wound up. August 14, 1876, Mr. Lamb wrote the Attorney-General. I will read the following :

“BANK DEPARTMENT, }  
ALBANY, August 14, 1876. }

“HON. CHARLES S. FAIRCHILD, *Attorney-General* :

SIR.—Several examinations of the 'Trades' Savings Bank, New York city, have been made during the past nine months. All have failed to remove the impression that the management of the bank is inefficient and loose, if not dishonest. The last examination was made on the eighth of August. It is reported again by the examiner that no title can be found by him to a bond and mortgage, claimed to be owned by the bank and put in the assets at \$15,000, nor is said bond and mortgage recorded. Another bond and mortgage is claimed to be worth \$6,000, and to be owned by the bank, but the officers fail to present any title to it in the bank. Since, most strenuous efforts by the examiner, under the direction of this department, do not cause the officers of the bank to produce the titles to this property, I am compelled to believe that the said officers cannot show such titles, but that they have falsely represented the assets of the bank to this department. From the statement made by the examiner, I came to the conclusion that the said bank is actually insolvent, and that it is not safe nor expedient for the corporation to continue to do business. Therefore, in compliance with the provisions of section 44 of chapter 371, Laws of 1875, I recommend that you institute such proceedings against said corporation as the nature of the case may require.

Yours respectfully,

HENRY L. LAMB, *Deputy Superintendent*.

Q. Where was Mr. Ellis, the superintendent, at that time? A. He was still absent on his vacation.

Q. Do you know whether there were proceedings taken to close the bank on your recommendation? A. There were.

Q. Do you know when the bank was closed? A. An injunction was served on the last Saturday in August, I think; I cannot give you the exact date.

Proceedings were temporarily suspended after the service of injunction until October 25, 1876, when Samuel B. White was appointed receiver by the following order:

At a Special Term of the Supreme Court of the State of New York, held at the chambers of Mr. Justice Landon, in the city of Schenectady, on the 25th day of October, 1876.

Present—Hon. JUDSON S. LANDON, *Justice*.

THE PEOPLE OF THE STATE OF NEW YORK *against* THE TRADES' SAVINGS BANK.

Upon the order to show cause herein, dated September 18, 1876, granted by Hon. Judson S. Landon, a justice of this court, and, upon proof of service of the same, and after hearing E. W. Paige, Deputy Attorney-General, for the plaintiffs, and Dexter A. Hawkins, for the defendant, it is

Ordered, that the defendant, its officers and agents, be and they are hereby restrained and enjoined from exercising any of the corporate rights, privileges or franchises of the defendant, and from collecting or receiving any debts or demands, or from paying out or in any manner transferring or delivering to any person any of the moneys, property or effects of the said defendant; and it is further

Ordered, that Samuel B. White, of the city of New York, be and he is hereby appointed receiver of all the stock, property, things in action, and effects, real and personal, of said corporation, the Trades' Savings Bank, and of all property held by it, with the usual powers and duties in such cases enjoined and exercised by receivers, according to the practice of this court; it is also

Ordered, that, before entering upon the duties of his office, such receiver shall make, execute and deliver, and cause to be executed and delivered, by a sufficient surety or sureties, to be filed with the clerk of Albany county, a bond to the people of the State of New York in the penal sum of \$25,000, conditioned for the faithful execution by said receiver of the trust in him placed, and the due performance of all duties appertaining thereto, said bond to be approved as to its sufficiency, form and manner of execution by a justice of the Supreme Court, after due notice of the time and place of the making of the application for such approval has been first given to the Attorney-General of the State of New York. Upon the filing of which bond,



thus approved, the receiver is authorized and directed to take possession of and sequester the stock, property, things in action, and effects, real and personal, of said corporation, the defendant herein, and to take and hold all property held by or in the possession of said defendant corporation; it is further

Ordered, that all money, personal property, choses in action and effects of, or held by said corporation, and all securities and obligations belonging to said corporation coming into the hands of said receiver, except articles of furniture and corporate books, and except the sum of \$1,500 to be retained by said receiver for the payment of necessary and incidental disbursements, be deposited with the United States Trust Company of the city of New York, to be held by said last-mentioned corporation subject to the further order of this court, and to the credit of the receiver in this action; said money and securities so deposited as aforesaid with said United States Trust Company not to be delivered over by it, except subject to, and in pursuance of, the order of this court: it is further

Ordered, that the said receiver do also forthwith proceed and recover by process of law or otherwise, pursuant to statute in such cases provided, any sum which may be due to such corporation, if the person so indebted be not wholly insolvent; it is further

Ordered, that before any distribution of any of said funds or assets shall be made, and within six months from date of this order, the said receiver report to the court, after giving notice of his intention so to do to the Attorney-General, his proceedings under this order, with an exhibit of the accounts and demands for and against said corporation and all its open and subsisting contracts, and a statement of the amount of money and assets in the hands of said receiver, together with a statement of his expenses and commissions, to the end that such order may be made in regard thereto, as the nature of the case may require; and it is further

Ordered, that until the coming in of said report and the hearing thereon, the question as to the distribution of said assets and moneys, and of the rights and interests of the respective parties claiming the same or any portion thereof, be reserved for further directions; it is further.

Ordered, that such further application may be made to the court, on the footing of this decree, as the receiver may be advised is proper and necessary for the instruction in the management and conduct of his trust; it is further

Ordered, that except as herein ordered and directed, the said receiver shall not dispose of, or in any manner interfere with, any of the assets of said bank directed to be deposited with the United States Trust Company.

It is hereby further ordered that said receiver shall immediately (upon the approval of the bond herein required to be given) in the presence of the Superintendent of the Banking Department of the State of New York, take the assets so directed to be deposited from said bank and deposit them with the said United States Trust Company, and take from said trust company a receipt stating that such assets are received under and in pursuance of the provisions of this decree, and under the restriction as to their transfer or disposition in this decree mentioned ; it is further

Ordered, that no application shall be made to any court, nor shall any action of the court be asked or suffered by the receiver relating to or in any way connected with the duties of said receiver or the funds or assets of the defendant above mentioned, or their transfer, sale or delivery, unless a five days' notice of such application be first given to the Attorney-General of the State of New York.

Filed and entered in Albany county October 27, 1876.

(Copy)

W. E. HASWELL,

*Clerk."*

The amount due depositors was about \$76,000 ; the number of depositors was about 600 ; the amount realized from assets, \$8,757.50, no dividend has been made by this bank.

Mr. President, I now call the attention of the Senate to The People's Savings Bank, which is next in order upon the brief. The testimony as to this bank taken before the committee, will be found on pages 265 to 273, and before the Senate on pages 288 to 293 and 670 to 719. The first thing that appears is the semi-annual report by the bank of July 1, 1873. There is nothing special about that report except that it was returned to the department without the valuation carried out, of some North Carolina bonds. It seems that report was filed without the prices of those bonds ever being inserted. It was left to Mr. Ellis to fill them in and he did not see fit to do it, and the report went in in that form ; at the same time the report was of such a character as to throw suspicion upon it, and to call for an examination, and Mr. Lamb said he did not have confidence in the management, and there was a special examination ordered which was made September 4 and 5, 1873. The Senate will remember the testimony ; Mr. Smith was upon the stand ; the examination was made by Reid and Smith. These gentlemen differ a little as to the valuation ; Mr. Reid made the deficiency \$23,198.50, and Mr. Smith made it \$36,975.38 and a deficiency of income of \$9,006.36. Here was a large deficiency, but the Senate will observe there was no further examination made until October 9, 1874. There was a letter from Mr. Ellis, to the Attorney-General, which is as follows :

“ STATE OF NEW YORK :

BANK DEPARTMENT, }  
ALBANY, *September 11, 1873.* }

“ Hon. FRANCIS C. BARLOW, *Attorney-General, State New York :*

SIR.—In pursuance of chapter 693, section 3, Laws of 1871, I hereby report to you the condition of the People’s Savings Bank of the city of New York, as shown by a special examination of said bank made by Geo. W. Reid and Isaac Smith, September 5, 1873, under authority of this department.

STATEMENT.

Amount due depositors.....	\$314,939 52
Assets.....	223,864 14
Deficiency.....	<u>\$91,075 38</u>

Of this deficiency the Superintendent of the Bank Department holds in trust the personal bond of the trustees for \$55,000, to make good any deficiency due to depositors on the final closing up of the affairs of the bank.

Since said bond was executed in 1871 to cover all then existing deficiencies the bank has continued in business, and shows by this examination an additional deficiency of \$36,075.38.

It is the opinion of the Superintendent of the Banking Department that it is unsafe and inexpedient for this bank to continue to transact business, and I would recommend that the necessary steps be taken to close up its affairs.

I am, sir, your obedient servant,

D. C. ELLIS,  
*Superintendent.*”

That, Mr. President, shows a deficiency of \$91,075.38, and states that of this deficiency the Superintendent of the Bank Department holds in trust the personal bonds of the trustees for \$55,000, to make good any deficiency due the depositors in the final closing up of the affairs of the bank. Mr. Ellis stated it was unsafe and inexpedient for the bank to continue to transact business, and requested the Attorney-General to take the necessary steps to close it up, which he did, and the complaint was verified by Mr. Ellis, September 13, 1873, in which it was alleged, as in the former complaint, that the bank had been, for more than a year previous to the verification, insolvent and unable to pay its debts; the complaint was verified like the other complaint which was produced to the Senate by my associate.

All that appears about that case is an entry upon the Attorney-

General's register of the word "settled" and the evidence that that settlement was ordered by Mr. Ellis. Senators will find it on pages 671 and 672. There was a correspondence between Mr. Rodgers, the secretary, and the Bank Department, which was as follows:

"NEW YORK, *October 1, 1873.*

"SUPERINTENDENT BANK DEPARTMENT:

DEAR SIR.—Immediately on the return of our committee from Albany we set ourselves about carrying out our understanding there arrived at. After two meetings of our board we have concluded to make one grand effort to raise the round sum of *one hundred thousand dollars*, in any kind of bona fide interest-paying assets which may be approved by yourself. We may at last be under the necessity of putting in a personal bond for part of the amount, but hope not. It will not be necessary if our people act as well as they talk. Our object in making a part of this amount is that we may at once remove the old bond, make up the present deficit, and take the N. Carolina bonds off the hands and of the books of the bank, the subscribers to this fund then owing them and holding them as security as far as they go against the amount they have subscribed.

More than one-half the amount needed (\$100,000) is already promised and subscribed for in writing, and the prospect is good. The man in our board who, both by his pecuniary ability and his responsibility for the original organization of the bank, ought to do more than any other man in the concern, has not yet decided how much he will stand, but a committee are to see him to-morrow morning and insist on his doing his duty. Should he come down as he ought, the thing is virtually settled, and the remainder of the amount can be secured without much doubt. We are to have another meeting of our board on Friday afternoon at 4½ o'clock, and shall continue to meet every few days until this matter is settled.

Yours respectfully,

CHAS. T. RODGERS,

*Secretary.*"

Witness read the following:

"NEW YORK, *October 1, 1873.*

"SUPERINTENDENT BANK DEPARTMENT:

DEAR SIR—Will you be good enough to send me a list of the signers of the present bond and the amount for which each is down. We intend having the new apportionment, if possible, made on a more equitable basis.

Yours, etc.,

C. F. RODGERS,

*Secretary.*"

Witness also read the following :

“ALBANY, N. Y., *October 3, 1873.*

“CHARLES D. RODGERS, *Secretary, New York:*

I send you herewith the list which you requested in your letter of October first.

HENRY L. LAMB,  
*Deputy.”*

Q. What is the next date in your copy-book? A. October 6, 1873 ; it reads as follows :

“ALBANY, N. Y., *October 6, 1873.*

“CHARLES D. RODGERS, *Secretary, New York:*

Yours of the fourth instant received. It would be of no use for me to meet with your trustees until such time as they are prepared to make some proposition as suggested by your committee when here. Your president and attorney understand my proposition and they left me with the understanding that they were to notify me when they would like to have me meet with the trustees. It would only involve a needless expense for me to go down before they are ready to see me.

DE WITT C. ELLIS,  
*Superintendent Bank Department.”*

Witness also read the following :

“NEW YORK, *October 23, 1873.*

“MR. D. C. ELLIS, *Superintendent, etc.:*

DEAR SIR.—Since seeing you I learn that our answer in the suit was to be filed this day, and as a matter of form our attorney has sent an answer by mail, containing a general denial, etc. This is a matter of legal form and technicality of which I know nothing, supposing, as I presume you did, that when the suit was put over until the last Tuesday in the present month, we had nothing to do in the meantime but to go ahead at making up the amount required. The papers in the suit set forth that the deficit is \$91,000, including the present bond, but I understood you to agree that if we could make it up, you would settle on the basis of Mr. Reid's calculation, which was about \$8,000 more in our favor. We have subscribed and promised \$85,000, of which over \$50,000 is now in, and I think there is no doubt about any of the others. I will write you again to-morrow evening, or on Saturday morning, and Mr. Olmstead will see you in Albany on Monday and report exactly how the matter then stands. We could have

had much more of it in by this time, but we have been laboring to get some parties to give other securities instead of their personal bonds, as they would like to.

Yours respectfully,

CHAS. F. RODGERS,

*Secretary."*

Q. Read the letter from the department? A. [Witness reads:]

"ALBANY, N. Y., *November 20, 1873.*

"FREDERICK OLMSTEAD, *President, New York:*

I desire an early adjustment of the affairs of the People's Savings Bank.

I have been reluctant to put the institution into liquidation while there was a reasonable prospect of a satisfactory settlement and extrication from its present embarrassment. I have therefore extended to the trustees every indulgence consistent with the performance of my duty. I am constrained to now require the trustees to come to definite conclusions, and to apprise me, without delay, what their conclusions are. Ample time has been granted to them by me for that purpose. If their interests do not enforce the necessity of prompt action, so as to put the bank in a sound condition, I will proceed to close it before it becomes more deeply involved.

DE WITT C. ELLIS,

*Superintendent Bank Department."*

Witness also read the following:

"ALBANY, *December 10, 1873.*

"F. OLMSTEAD, *President, New York:*

Since my last communication to you of November twentieth, in regard to the affairs of your bank, I have heard nothing in reply.

I must ask you for a final disposition of the matter at once, so that I may be able to prepare my annual report. Will you report the condition of things, and name a day next week when I can meet with you to make an examination with a view to a final settlement?

DE WITT C. ELLIS,

*Superintendent Bank Department."*

Q. Read the next date? A. [Witness reads:]

"ALBANY, November 5, 1875.

"CHARLES D. RODGERS, *Secretary, New York* :

We are waiting for the report from your bank.

Such delays in making your reports are wholly inexcusable and unwarrantable, besides causing us much trouble in preparing our annual report.

Will you forward at once ?

Yours, etc.,

DE WITT C. ELLIS,  
*Superintendent Bank Department."*

Q. Read the next date ? [Witness reads:]

"ALBANY, N. Y., Nov. 11, 1875.

"HON. DANIEL PRATT, *Attorney-General* :

In pursuance of section 44, chapter 371, Laws of 1875, I hereby respectfully call your attention to the condition of the People's Savings Bank in the city of New York.

From the facts officially furnished to me by George W. Reid, and an examiner duly appointed by me to examine into the condition of said savings bank, I find that on the 10th day of November, 1875, the total liabilities of the bank were \$200,131.79, and the total assets were \$155,351.83, leaving a deficiency of \$42,779.96.

I deem it entirely unsafe for this bank longer to continue its business, and I therefore recommend that you take the necessary legal steps to close up its affairs.

DE WITT C. ELLIS,  
*Superintendent Bank Department."*

Q. Produce the report of the bank made January 1, 1874. [Witness here produces bank report made January 1, 1874.]

There was a report by the bank of January 1, 1874, showing a surplus of assets of \$29.13 of that date. Among the assets of that bank are bonds of sundry trustees to the amount of \$47,500, as appears at page 325 of the Senate testimony.

Then comes another report by the bank of July 1st, 1874, showing a deficiency of assets of \$1,420.18.

*Report of the People's Savings Bank, an incorporated institution for savings, of its condition on the 1st day of July, 1874, made to the Superintendent of the Banking Department, as required by chapter 136 of the Laws of 1857.*

## RESOURCES.

1. Bonds and mortgages, as per Schedule A, hereto annexed.....	\$121,300 00
2. Stock investments, as per Schedule B, thereto annexed.....	47,932 50
3. Amount loaned on public stocks, as per Schedule C, hereto annexed.....	.....
4. Amount loaned on stocks or bonds of private corporations, as per Schedule D, hereto annexed, .....	.....
5. Amount loaned on personal securities, as per Schedule E, hereto annexed.....	.....
6. Real estate ; standing on books at \$        market value, \$        ; cost.....	.....
7. Cash on deposit in banks or trust companies, as per Schedule F, hereto annexed.....	18,191 48
8. Cash on hand not deposited in bank.....	7,158 42
9. Amount of assets not included under either of the above heads, the particular items of which are set forth in Schedule G, hereto annexed.....	73,178 62
	<hr/>
	\$267,761 02
	<hr/>

## LIABILITIES.

1. Amount due depositors :	
Principal.....	\$257,361 50
Interest credited for the '1st of	
July, 1873.....	6,487 20
	<hr/>
	\$263,848 70
2. Other liabilities, viz. :	
Cash of stock on market value.....	5,332 50
	<hr/>
	\$268,181 20
	<hr/>

Nothing was done by Mr. Ellis. Then there was a special examination; that examination was not on file in the department but was produced by Mr. Reid ; Mr. Ellis stated he did not think it had been made; but that is immaterial ; Mr. Ellis and Mr. Reid did examine the Bank at that time. There was a deficiency of assets of \$7,357.40, as appears by this examination.





## SPECIAL EXAMINATION OF PEOPLE'S SAVINGS BANK — (Continued).

INVESTMENTS.	Rate of interest.	Amount at par.	Rate.	Revenue.	Totals.
Due depositors.....	....	.....	....	\$244,365 59	
Interest accrued.....	....	.....	....	3,070 00	
Due Bank of Metropolis (Brooklyn city bonds collected).	....	.....	....	10,000 00	\$257,435 59
Deficiency of assets.....	....	.....	....	.....	\$7,357 40
INCOME.					
Bonds and mortgages.....	7	\$123,300 00	....	\$8,631 00	
Call loans.....	7	4,400 00	....	308 00	
Yonkers and New York (balance).....	7	12,000 00	....	840 00	
Missouri.....	6	20,000 00	....	1,200 00	
Cash in bank.....	4	8,500 00	....	340 00	
Bond of trustees.....	7	54,000 00	....	3,780 00	
					\$15,099 00
CHARGES.					
Interest to depositors.....	....	.....	....	\$12,000 00	
Salaries, etc.....	....	.....	....	7,500 00	
					19,500 00
Deficiency of income.....	....	.....	....	.....	\$4,400 00

Mr. Reid testified, on page 385, that the bank at that time was insolvent. Very strange to say this report was not filed in the department, and there was no record made of it there at all. Perhaps this was very natural if Mr. Ellis did not know of its being made, and perhaps Mr. Reid thought it was not worth while to file it; but it is sufficient to say there was an examination made, and Mr. Ellis was informed of all the facts; and it is immaterial whether it was filed or not.

Mr. Ellis, up to this time, had taken no pains, except by this examination, to ascertain the condition of that bank; and he found it insolvent; and there is no record of any proceeding until we come down to the closing of the bank. We now read the report of the bank of January, 1875.

*Report of the People's Savings Bank, an incorporated institution for savings, of its condition on the 1st day of January, 1875, made to the Superintendent of the Banking Department, as required by chapter 136 of the Laws of 1857.*

## FINANCIAL.

### RESOURCES.

1. Bonds and mortgages, as per Schedule A, hereto annexed.....	\$123,300 00
2. Stock investments, as per Schedule B, hereto annexed.....	47,932 50
3. Amount loaned on public stocks, as per Schedule C, hereto annexed.....	.....
4. Amount loaned on stocks or bonds of private corporations, as per Schedule D, hereto annexed.....	.....
5. Amount loaned on personal securities, as per Schedule E, hereto annexed....	.....
6. Real estate, cost \$ ; market value, \$ ; standing on books at \$ .....	.....
7. Cash on deposit in banks or trust companies, as per Schedule F, hereto annexed.....	4,163 30
8. Cash on hand not deposited in bank.....	5,347 66
9. Amount of assets not included under either of the above heads, the particular items of which are set forth in Schedule G, hereto annexed .....	69,676 20
	<hr/> <hr/> \$250,419 66 <hr/> <hr/>

## LIABILITIES.

1. Amount due depositors.....	\$243,559 60
Principal.....	\$237,356 39
Interest credited for the 1st of Janu- ary, 1875 .....	
2. Other liabilities, viz.: Excess of cost over market value of stocks and bonds.....	4,552 50
3. Excess of assets over liabilities.....	2,307 56
	<hr/>
	\$250,419 66
	<hr/>

## STATISTICAL.

1. Number of open accounts on the morning of Janu- ary 1, 1875.....	1,587
2. Number of accounts opened during the year 1875..	518
3. Number of accounts closed during the year 1874...	459
4. Number of accounts opened since organization....	4,721
5. Amount deposited, not including interest credited, during 1874.....	\$424,812 96
6. Amount deposited, including interest credited, for the same period.....	437,503 37
7. Amount withdrawn during the year 1874.....	449,850 23
8. Amount of interest or profits received or earned * during the year 1874.....	15,596 83
9. Amount of interest credited to depositors for the same period.....	12,690 41
10. Amount of each semi-annual credit of interest, for the year 1874, and when credited: July 1, 1874, \$6,487.20; January 1, 1875, \$6,203.21. Credited at other periods during the year.....	....
11. Rate per cent of dividends or interest to depositors during the past year, six per cent.	

That shows a surplus of assets of \$307.56; The lease and improve-  
ments are put in at \$10,000.

Then comes a letter from Mr. Reid to Mr. Ellis, dated November  
10, 1875, showing a deficiency of assets of \$40,226.88, accompanied by  
the report which is as follows :

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\* If amount received is reported, strike out "or earned:" if amount earned is  
reported, strike out "received or."

NEW YORK, *November 10, 1875.*

Hon. D. C. ELLIS :

DEAR SIR—I have been up to the People's Savings Bank to-day, and find they owe their depositors..... \$196,431 71

**Assets :**

Bonds and mortgages.....	\$81,300 00	
Call loan in pass-book.....	2,428 18	
North Carolina State—\$10,000 8.....	800 00	
Safes and fixtures, say.....	3,000 00	
Cash and in deposit.....	9,926 65	
		<hr/>
		\$97,454 83
Deficiency.....		<hr/>
		\$98,976 88
Rodgers is in the bond you hold for.....	\$5,700 00	
And Capt. Burden for.....	1,500 00	
New bond <i>on interest</i> , in place of the old one and now in the bank.....	51,500 00	
		<hr/>
		58,750 00
Deficiency over the bonds.....		<hr/>
		<u>\$40,226 88</u>

The accrued interest in bonds and mortgages will about balance that accrued to depositors.

*November 10.***BONDS AND MORTGAGES, PEOPLE'S SAVINGS BANK.**

No.	Location.	Amount.	Value.
5	New York.....	\$9,000	\$18,000
7	Morrisania.....	2,000	4,500
13	New York.....	15,000	35,000
16	New York.....	7,500	16,000
20	New York.....	6,000	13,000
23	Harlem.....	†2,500	†6,000
25	Brooklyn.....	2,500	6,000
26	Brooklyn.....	7,000	15,000
*27	Jersey City.....	5,000	15,000
*29	New York.....	2,000	8,000
30	Staten Island.....	†6,000	12,000
*31	Flatbush.....	8,000	20,000
34	Brooklyn.....	†5,000	12,000
36	New York.....	3,800	8,000
		<hr/>	
		\$81,300	

“ November 11, 1875.

“ Hon. D. C. ELLIS, *Superintendent* :

DEAR SIR—I have received your telegram, and now inclose the report on the People's and min. of B. and M., as far as I can from my notes. The trustees on the bond in the department have all given new bonds on interest, for a larger amount or put in bonds and M., except Capt. Burden \$1,500, and Rogers, \$5,750, but no interest has been paid.

The \$7,000 dep. in bonds, and S. Citizens' Bk., were transferred as part payment of the \$25,000 B. and M. sold to a depositor, and remain on dep. to save the interest from July to January first.

To-morrow I will go up to the “ Trades,” and Saturday may go to Jamaica to examine that bank.

Yours truly,  
GEO. W. REID.”

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\* Nos. 27, 29 and 31 were *contributed* by trustees instead of *bonds*, but the interest has not been paid. One bond and mortgage for \$25,000 has been assigned to a depositor of \$11,000, he paying the difference in cash. No. 33 (Rodgers' wife) \$5,000 has been taken out, he says, to increase it to \$5,750, the amount of his bond, and I have counted that amount in trustee's bonds. The wife would not unite in No. 29, but the property is said to be worth \$8,000.

† Foreclosing.

PEOPLE'S SAVINGS BANK, NEW YORK CITY.

Examined November 10, 1875, by George W. Reid.

ASSETS.	Rate of interest.	Amount at par.	Market Value.		Totals.
			Rate.	Amount.	
Bonds and mortgages.....	7	.....	....	.....	\$81,300 00
Call loan on pass-book.....	7	.....	....	.....	2,428 18
North Carolina State bonds.....	6	\$10,000 00	8	\$800 00	800 00
Safe and fixtures.....	.....	.....	....	.....	3,000 00
Cash in safe.....	.....	.....	....	1,467 05	
Cash in Bull's Head Bank.....	.....	.....	....	659 60	
Cash in Bond Street Savings Bank.....	6	.....	....	4,000 00	
Cash in Citizens' Savings Bank.....	6	.....	....	3,000 00	
Interest accrued.....	.....	.....	....	.....	9,126 65
Bonds of trustees.....	.....	.....	....	.....	1,947 00
Deficiency.....	.....	.....	....	.....	58,750 00
					42,779 96
					\$200,131 79
LIABILITIES.					
Due 1,523 depositors.....	.....	.....	....	\$196,431 79	
Interest accrued.....	.....	.....	....	3,700 00	
					200,131 79

PEOPLE'S SAVINGS BANK — (Continued).  
Annual Income and Charges Thereon.

INVESTMENTS, ETC.	Rate of interest.	Amount at par.	Revenue.	Totals.
INCOME.				
Bonds and mortgages.....	7	\$81,300 00	\$5,691 00	
Call loans.....	7	2,428 00	169 96	
Cash in bank.....	6	7,000 00	420 00	\$6,280 96
CHARGES.				
Interest to depositors.....	.....	.....	\$10,300 00	
Salaries.....	.....	.....	2,700 00	
Rent.....	.....	.....	3,500 00	
Internal revenue tax.....	.....	.....	200 00	
All other charges.....	.....	.....	500 00	
				\$17,200 00
Deficiency of income.....	.....	.....	.....	\$10,919 04

The assets show only forty-nine per cent on the amount due the depositors. There are also trustees' bonds for about twenty nine per cent more. If these assets, including the trustees' bonds, are all good, there is a deficiency of twenty-five or thirty per cent. The expenses of conducting the business are more than the whole income, leaving nothing to pay interest to depositors.



The bank was closed on this report; but that large deficiency shows how negligent Mr. Ellis had been in not examining it more thoroughly. It shows that the bank was in a very bad condition. This report shows that the deficiency which appeared on Mr. Ellis' personal examination of October 9, 1874, never was made up, in fact; Mr. Ellis closed the bank on that report of November 10, 1875; it was closed November 30, 1875. The amount due depositors was \$192,606.15; there has been a dividend by the receiver of thirty-three and one-third per cent. It appears in evidence the receiver holds mortgages which are second, third and fourth liens, notwithstanding all these examinations and also mortgages on leasehold property. It is in evidence that these bonds and mortgages were examined October 9, 1874, when Mr. Ellis was present, and he failed to discover they were second, third and fourth mortgages and mortgages on leasehold. It also appears that there is an alleged discrepancy in the ledgers.

This comprises all I have to say in reference to the People's Savings Bank.

I will now take up "The Mechanics and Traders' Savings Institution."

We first have a report by Reid, Aldrich and Vrooman, of April 1, 1874, which is as follows:

MECHANICS AND TRADERS' SAVINGS INSTITUTION, NEW YORK.  
*Examined March 31 and April 1, 1874, by George W. Reid, Wm. F. Aldrich and Isaac H. Vrooman.*

ASSETS.	Rate of interest.	Amount at par.	MARKET VALUE.		Totals.
			Rate.	Amount.	
Bonds and mortgages.....	7	.....	....	.....	\$747, 650 00
Tennessee State.....	6	\$168,000 00	70	\$117,600 00	
Alabama State.....	8	166,000 00	90	149,400 00	
North Carolina State.....	6	114,600 00	30	34,380 00	
South Carolina State.....	6 gold	155,000 00	17	26,350 00	
New York city.....	6	100,000 00	100	100,000 00	
New York city.....	7	275,000 00	100	275,000 00	
Brooklyn city.....	7	257,000 00	103	264,710 00	
Buffalo city.....	7	130,000 00	100	130,000 00	
Rochester city.....	7	256,000 00	100	256,000 00	
Oswego city.....	7	197,000 00	100	197,000 00	1,584, 440 00
Westchester county.....	7	10,000 00	100	10,000 00	
Yonkers town.....	7	21,000 00	100	21,000 00	
Morrisania town.....	7	3,000 00	100	3 000 00	
Banking-house.....	....	.....	....	.....	100,000 00
Real estate bid in on foreclosure, cost (and worth more than).....	....	.....	....	.....	30,000 00
Suspense account, bankruptcy claims, worth.....	....	.....	....	.....	20,000 00
Cash in vault.....	....	.....	....	\$19,622 11	109,912 80
Cash in Chatham National Bank.....	4	.....	....	11,964 62	
Cash in Oriental Bank.....	4	.....	....	78,326 07	

Interest accrued.....	.....	.....	.....	.....	52,338 00
LIABILITIES.					
Due 5,069 depositors.....	.....	.....	.....	.....	\$2,644,340 80
Interest accrued.....	.....	.....	.....	.....	\$2,525,709 62
					36,300 00
Surplus.....	.....	.....	.....	.....	2,562,009 62
					\$82,331 18

MECHANICS AND TRADERS' SAVINGS INSTITUTION — ( *Continued* ).  
*Annual Income and Charges thereon.*

INVESTMENTS, ETC.	Rate of interest.	Amount at par.	Revenue.	Totals.
INCOME.				
Bonds and mortgages.....	7	\$747,650 00	\$52,335 50	.
Alabama State.....	8	166,000 00	13,280 00	
City and town bonds.....	6	100,000 00	6,000 00	
City and town bonds..	7	1,149,000 00	80,430 00	
Cash in bank.....	4	90,290 00	3,611 60	\$155,057 10
CHARGES.				
Interest to depositors.....	....	.....	\$145,000 00	.
Salaries.....	....	.....	15,600 00	
Internal revenue tax.....	....	.....	1,857 00	
Other taxes.....	....	.....	778 00	
All other charges.....	....	.....	6,900 00	170,135 00 -
Deficiency of income.....	....	.....	.....	\$14,477 90

The large amount locked up in Southern State bonds, upon which interest is suspended, the failure to rent real estate and the balance of an old bankruptcy claim have combined to reduce the income of the bank so much that a deficiency of over \$14,000 will occur for the current year. The trustees hope to realize something from the southern bonds and the sale of real estate.

*Report of Mechanics and Traders' Savings Institution, an incorporated institution for savings, of its condition on the 1st day of July, 1874, made to the Superintendent of the Banking Department, as required by chapter 136 of the Laws of 1857.*

#### RESOURCES.

1. Bonds and mortgages, as per Schedule A, hereto annexed .....	\$748,150 00
2. Stock investments, as per Schedule B, hereto annexed .....	1,703,039 75
3. Amount loaned on public stocks, as per Schedule C, hereto annexed .....	
4. Amount loaned on stocks or bonds of private corporations, as per Schedule D, hereto annexed....	
5. Amount loaned on personal securities, as per Schedule E, hereto annexed .....	
6. Real estate standing on books at cost, market value \$130,554.55 cost .....	109,582 05
7. Cash on deposit in banks or trust companies, as per Schedule F, hereto annexed .....	82,009 12
8. Cash on hand not deposited in bank .....	20,000 00
9. Amount of assets not included under either of above heads, the particular items of which are set forth in Schedule G, hereto annexed.....	100,375 01
	<hr/>
	\$2,763,155 93
	<hr/>

#### LIABILITIES.

1. Amount due depositors .....	\$2,565,178 17
Principal.....	\$2,491,601 51
Interest credited for the 1st of July, 1874 .....	73,574 66
2. Other liabilities, viz.: Excess of cost.....	69,600 23
3. Excess of assets over liabilities.....	128,376 83
	<hr/>
	\$2,763,155 93
	<hr/>

That report shows a surplus of assets of \$82,331.48, and a deficiency of income of \$14,477.90.

Three months afterward, we have the report of the bank, the report of July 1, 1874, which is as follows:

#### RESOURCES.

1. Bonds and mortgages, as per Schedule A, hereto annexed .....	\$748,150 00
2. Stock investments, as per Schedule B, hereto annexed .....	1,703,039 75
3. Amount loaned on public stocks, as per Schedule C. hereto annexed .....	
4. Amount loaned on stocks or bonds of private corporations, as per Schedule D, hereto annexed ....	
5. Amount loaned on personal securities, as per Schedule E, hereto annexed .....	
6. Real estate, standing on books, at cost market value \$130,554.55, cost.....	109,582 05
7. Cash on deposit in banks or trust companies as per Schedule F, hereto annexed .....	82,009 12
8. Cash on hand not deposited in bank.....	20,000 00
9. Amount of assets not included under either of the above heads, the particular items of which are set forth in Schedule G, hereto annexed .....	\$100,375 01
	<hr/>
	\$2,763,155 93
	<hr/>

#### LIABILITIES.

1. Amount due depositors .....	\$2,565,178 17
Principal .....	\$2,491,601 51
Interest credited for the 1st of July, 1874.....	73,574 66
2. Other liabilities, viz.: Excess of cost.....	69,600 23
3. Excess of assets over liabilities.....	128,376 83
	<hr/>
	\$2,763,155 93
	<hr/>

Showing a surplus of assets of \$128,376.83. Schedule G in this report of July, 1874, was as follows:

## SCHEDULE G.

Difference between market value and cost of the following investments:

	Excess of cost over market value.	Excess of market value over cost.
United States stocks.....	.....	.....
New York State stocks.....	.....	.....
Stocks of other States.....	\$148,050 25	.....
Bonds of counties, cities and towns of this State.....	.....	\$57,476 82
Other stocks and bonds.....	.....	.....
Real estate.....	.....	20,972 50
Totals .....	\$148,050 25	\$78,449 32
Difference.....	.....	*\$69,600 93

LOANS, DEPOSITS, INVESTMENTS OR ASSETS OF EVERY DESCRIPTION  
NOT HERETOFORE ENUMERATED, VIZ.:

† Interest accrued and uncollected July 1, 1874:

Bonds and mortgages.....	\$7,556 21
New York city and county bonds.....	4,811 63
Brooklyn city bonds.....	8,995 00
Tennessee State bonds.....	.....
Oswego city bonds.....	6,895 00
North Carolina bonds.....	.....
South Carolina bonds.....	.....
Alabama bonds.....	6,640 00
Buffalo city bonds.....	4,550 00
Rochester bonds.....	8,820 19
Westchester county bonds.....	175 00
Yonkers bonds.....	612 49
Morrisania, N. Y., bonds.....	275 01
Judgment secured by real estate.....	5,004 48
Suspense account.....	41,000 00
	<u>\$100,375 01</u>

That shows an "expense account" in the assets of \$41,000, without stating how it was made up. It seems that the trustees of this bank, Messrs. Gregory and Floyd, who were both upon the stand, had several interviews with Mr. Ellis, and they showed to Mr. Ellis and their friends conclusively, that there was a very large deficiency in this bank—as they said, at least \$100,000—and these facts, as they have appeared since the closing of the bank, have fully justified their estimate

\*If cost exceeds market value the difference should be entered under the head "Other liabilities," in the report.

† As interest credited to depositors is stated among the liabilities, it will, of course, be just to include in this schedule the interest due, though unpaid, on investments.

Mr. Ellis himself admits—admitted at the time—that there was a deficiency of \$25,000 to \$50,000. In the complaint they showed the deficiency of the assets of the bank to be \$115,933.33. That suit seems to have been ended. We then come to the report of Mr. Reid, of October 5, 1874. Notwithstanding all these allegations that have been made against this bank, and notwithstanding that, by the report of April 1, 1874, there appeared a large deficiency of income, Mr. Ellis took no pains to examine the bank. He took the statement of the trustees and the gentlemen who approached him; but he did not examine the bank, the bank-books, and inform himself; and this examination, of October 5, 1874, is the first examination subsequent to that of the previous April. It turned out there was a large deficiency of assets of 30,000 odd dollars, and a deficiency of income of \$14,000 and odd.

I will read the letter of Mr. Reid to Mr. Ellis, and the report of Mr. Reid of October 5, 1874:

“Hon. D. C. ELLIS, *Superintendent Bank Department* :

Having, at your request, examined into the condition of the Mechanics and Traders' Saving Institution of New York, I annex statement showing deficiency of assets of \$30,071.90.\*

The State of Alabama suspended payment of interest last January, and as it is uncertain when it will resume, it is almost impossible to ascertain the value of bonds, there being no sales at present; but from the best information attainable they are estimated at fifty per cent. The other bonds are put in at the present quotations.

The annual deficiency of income is estimated at present rate at \$14,191.82.

Respectfully submitted,

GEORGE W. REID.

Examined October 5, 1874, and subsequent days.”

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\* Less judgment against E. Goulard, \$5, 090; making deficiency \$24, 981.90.



MECHANICS AND TRADER'S SAVINGS INSTITUTION. (Examined October 5, 1874, and subsequent days.)

INVESTMENTS.		Rate of interest.	Amount at par.		Totals.
Bonds and mortgages.		7		.....	\$732,650 00
Tennessee State bonds.		6	\$168,000 00	\$98,280 00	
Alabama State bonds.		8	166,000 00	83,000 00	
Gram for mortgages, Enfant R. R.		.....		.....	
North Carolina.		6	114,600 00	34,380 00	
South Carolina.		6	155,000 00	26,350 00	
New York City.		6	40,000 00	40,000 00	
New York City.		7	275,000 00	275,000 00	
Brooklyn City Post.		7	240,000 00	247,800 00	
Brooklyn City Wallabout.		7	10,000 00	10,225 00	
Buffalo City.		7	130,000 00	130,000 00	
Rochester City.		7	256,000 00	256,000 00	
Oswego City.		7	197,000 00	197,000 00	
Westchester County.		7	10,000 00	10,000 00	
Yonkers Town.		7	21,000 00	21,000 00	
Morrisania Town.		.....	3,000 00	3,000 00	1,432,035 00
Banking-house.		.....		.....	100,000 00
Two houses in Brooklyn.		.....		.....	30,000 00
One house in East Forty-fifth street, New York.		.....		.....	16,000 00
Suspense account, balance bankruptcy claim.		.....		.....	10,000 00
Cash in vault.		.....		\$12,000 00	
Cash in Chatham National Bank.		.....		7,792 58	
Cash in Oriental bank.	4	.....		14,975 24	
					34,767 82

*Examination—Continued.*

INVESTMENTS.	Rate of interest.	Amount at par.		Totals.
Interest accrued.....	....	.....	.....	\$47,070 00
Deficiency of assets*.....	....	.....	.....	30,071 90
				\$2,432,594 72
Due depositors.....	....	.....	\$2,396,594 72	
Interest accrued.....	....	.....	36,000 00	\$2,432,594 72

\*Less judgment against L. Goulard, \$5,198; leaving the deficiency \$24,981.90.

Mr. Best, the receiver of this bank, was on the stand, and states there was an additional deficiency of \$70,000, that being the difference between the dealers' ledger and the depositors' ledger; it also appears on the books that various irregularities occurred, and among others the building committee, it seems, awarded themselves some \$5,000 several years after they did the work and paid themselves out of the assets of the bank.

There is a letter from Mr. Ellis to Mr. A. T. Conkling, president, October 19, 1874, which was as follows:

“STATE OF NEW YORK:

BANK DEPARTMENT, }  
ALBANY, *October 19, 1874.*

“A. T. CONKLIN, *President*:

By the recent special examination made by Mr. Reid and myself of the condition of the Mechanics and Traders' Savings Bank, it appears that the bank, instead of having a surplus as heretofore reported, is deficient to the amount of \$24,981.90. The assets of the bank consist largely of southern stocks, which are very much depreciated, and the market for which is so unstable and fluctuating that it is a matter of opinion and judgment what the exact deficiency is. It would undoubtedly, in the judgment of some, exceed the amount named, and in fixing the valuation of some of the securities where there is no determined valuation by sales in the market, it would, perhaps, be as fair and equitable to name a price which would increase the deficiency to \$50,000 instead of the sum reported to me.

It certainly is desirable for the bank to rid itself of this class of securities as fast as possible, with due regard to the ultimate interests of depositors, and substitute for them securities more permanent and certain.

I regret to find a lack of harmony in the board of trustees, which tends to cripple the success of the bank. Co-operation, on the part of the managers, can only insure the growth and prosperity of the institution.

In view of your present condition, it will be necessary for the trustees to make good the existing deficiency to depositors, either by direct payment or by satisfactory personal bonds, guaranteeing the depositors against loss by the present impairment of assets.

I would also suggest that all expenses not absolutely required in running the bank be dispensed with. It would seem that *one* paid officer, with his subordinates, would be all that would be needed until such time as your business is increased and your deficiency made good.

Trusting you will submit this letter to your board at the earliest opportunity, and awaiting their action and reply,

I am, sir, truly yours,

D. C. ELLIS,  
*Superintendent.*"

In that letter he states it would be fair to name the deficiency at \$50,000, and calling upon the trustees to make the deficiency good, either by direct payment or by satisfactory personal bonds. It does not appear that he ever made any effort to inform himself whether they did make the deficiency good during this period on the books of the bank. It appeared they were declaring dividends they had not earned.

Mr. Ellis wrote a letter to S. P. Bellamy, Esq., October 19, 1874, which is as follows :

"STATE OF NEW YORK :

BANK DEPARTMENT, }  
ALBANY, *October 19, 1874.* }

"S. P. BELLAMY, Esq., *Brooklyn, N. Y. :*

DEAR SIR. — Your favor of seventeenth inst., is received, and duly considered.

I have this day addressed an official letter to the president of the bank for the consideration of the board of trustees. I respectfully direct your attention, and those you represent, to the same, for my views on the matter under consideration.

Very truly, yours,

D. C. ELLIS,  
*Superintendent.*"

That letter showed sufficiently he was informed there were difficulties going on in this bank, and that he should be on his guard in respect to it. Mr. Gregory, the trustee, testified that to his knowledge, no payment was made or security ever given by the trustees as stated by Mr. Ellis' letter of October 19, 1874.

"Q. You got information that you were to be called upon to pay up, or give some security? A. Yes, sir.

Q. Was there any thing done in the way of paying up by the trustees? A. Not that I ever knew of.

Q. No security in any shape or form? A. Not that I am aware of.

Q. Nothing was done in accordance with this recommendation of the superintendent? A. Not to my knowledge."

I now come to the report of the bank of January 1, 1876, which is as follows :

*Report of the Mechanics and Traders' Savings Institution, an institution for savings, of its condition on the morning of the 1st day of January, 1876, made to the Superintendent of the Banking Department, as required by chapter 371 of the laws of 1875.*

## RESOURCES.

1. Bonds and mortgages, as shown by Schedule A, hereto annexed.....	\$616,650 00
2. Stock investments, as shown by schedule B, hereto annexed, cost.....	1,310,012 25
3. Amount loaned on stocks, as authorized by section 27, chapter 371, Laws of 1875, and shown by Schedule C, hereto annexed.....	
4. Banking-house and lot at cost.....	79,093 50
5. Other real estate at cost.....	58,748 06
6. Cash on deposit in banks or trust companies, as Shown by Schedule D, hereto annexed.....	78,101 57
7. Cash on hand.....	15,000 00
8. Amount of all other assets, the particular items of which are set forth in Schedule E, hereto annexed.....	79,764 98
	<hr/> \$2,237,370 36 <hr/>

## LIABILITIES.

1. Amount due depositors.....	\$1,977,572 42
Principal .....	\$1,920,559 80
Interest credited for the six months ending Jan. 1, 1876, .....	57,012 62
2. Other liabilities, viz.: Excess of cost over market values .....	*170,267 81
3. Other liabilities, viz.: Loan had on city Rochester bonds .....	80,000 00
4. Excess of assets over liabilities.....	9,530 13
	<hr/> \$2,237,370 36 <hr/>

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\*This amount does not agree with Schedule B; that schedule shows an excess of \$185,426.25. (In pencil in original.)

## CASH TRANSACTIONS DURING THE YEAR 1875.

*Receipts.*

Cash on hand and in bank or trust companies, Jan. 1,	
1875, before transactions of the day.....	\$428,213 08
From depositors.....	473,643 67
From interest on loans, deposits and investments....	130,861 74
From all other profits, viz.: Premiums, \$5,128.51; rents, \$2,370.16 .....	7,498 67
From mortgages paid, called in or foreclosed.....	108,000 00
From redemption of stocks.....	460,925 00
From loans repaid.....	
Other sources, viz.: Real estate, *\$5,029.29; by loans on stocks, *\$210,000.....	215,029 29
	<hr/>
	\$1,824,171 45
	<hr/>

*Payments.*

To depositors, including interest paid to them.....	\$1,050,623 61
For loans on bonds and mortgages.....	2,000 00
For loans on stocks and other securities.....	130,000 00
For stocks and bonds purchased, par value, \$476,500,	516,415 00
For real estate purchased .....	5,850 00
For interest not included in payment to depositors...	3,615 89
For expenses, as shown by Schedule F, hereto annexed,	20,535 31
Other payments, viz.: Expenses of real estate, taxes, insurance and repairs....	2,030 07
Cash on hand and in bank Dec. 31, 1875, after the transactions of the day.....	93,101 57
	<hr/>
	\$1,824,171 45
	<hr/>

STATE OF NEW YORK, }  
COUNTY OF NEW YORK. } ss.:

Alfred T. Conklin, president, and Henry C Fisher, secretary, of the Mechanics and Traders' Savings Institution, an institution for savings, organized under the laws of the State of New York, located and doing business at No. 283 Bowery, in the city of New York, being duly sworn, each for himself saith, that the forgoing report of resources and liabilities and cash transactions, and the schedules accompanying this report designated, respectively, A, B, C, D, E, F and G, are, in all respects, a true statement of the condition of said institution before the transactions of any business on the morning of

the 1st day of January, 1876, in respect to each and every of the items and particulars therein specified.

A. T. CONKLIN,  
*President.*

H. C. FISHER,  
*Secretary.*

In pencil : Please complete and return as soon as possible.

HENRY L. LAMB,  
*Dept. Supt.*

Severally subscribed and sworn by both }  
deponents, the 1st day of February, }  
1876, before me.

GEORGE N. PRATT,  
*Notary Public, Westchester Co., New York.*

STATE OF NEW YORK, }  
COUNTY OF NEW YORK. } ss.:

Charles Roberts, William V. Le Count and Charles J. Kane, being duly sworn, each for himself saith, that he is one of a committee of three regularly appointed by the trustees of the Mechanics and Traders' Savings Institution, an institution for savings, located and doing business in the city of New York. That such committee made an examination of the books, vouchers and assets of said institution for savings (as provided and directed by section 45 of chapter 371 of the Laws of 1875), and that the within statement of assets is a true statement of the value of such assets in possession of and owned by said institution on the morning of January 1, 1876, as appeared by the examination made by such committee, in pursuance of section 45 of the law above cited.

CHAS. ROBERTS.  
WM. V. LE COUNT.  
CHAS. J. KANE.

Subscribed and sworn by each depo- }  
nent before me this 31st day of }  
January, 1876.

GEORGE N. PRATT.  
*Notary Public, Westchester Co.*  
210

**SCHEDULE A.**  
*Bonds and Mortgages.*

No.	County where mortgaged premises are located.	In what city, village or town.	Principal unpaid.	Estimated value of mortgaged premises.	Rate of interest.	Date of last payment of interest.
4...	New York	.....	\$5,000 00	\$10,000 00	.....	Dec. 1, 1875
5...	Kings	.....	1,250 00	2,500 00	.....	Dec. 1, 1875
9...	Kings	.....	2,000 00	4,000 00	.....	Dec. 1, 1875
10...	Kings	.....	1,300 00	2,600 00	.....	Dec. 1, 1875
15...	New York	.....	4,500 00	11,250 00	.....	Dec. 1, 1875
19...	Kings	.....	1,200 00	2,500 00	.....	Dec. 1, 1875
23...	Kings	.....	800 00	3,000 00	.....	Dec. 1, 1875
24...	Kings	.....	600 00	7,500 00	.....	Dec. 1, 1875
26...	New York	.....	1,600 00	5,000 00	.....	Dec. 1, 1875
46...	Kings	.....	2,000 00	5,000 00	.....	Dec. 1, 1875
47...	Kings	.....	5,000 00	20,000 00	.....	June 1, 1875
50...	Kings	.....	500 00	2,500 00	.....	Dec. 1, 1875
52...	Kings	.....	1,000 00	2,500 00	.....	Dec. 1, 1875
53...	New York	.....	12,000 00	25,000 00	.....	Dec. 1, 1875
55...	New York	.....	5,000 00	10,000 00	.....	Dec. 1, 1875
56...	New York	.....	6,000 00	12,000 00	.....	Dec. 1, 1875
57...	New York	.....	2,500 00	7,500 00	.....	Dec. 1, 1875
58...	New York	.....	6,000 00	12,000 00	.....	Dec. 1, 1875
59...	New York	.....	4,000 00	15,000 00	.....	Dec. 1, 1875
60...	New York	.....	5,000 00	10,000 00	.....	Dec. 1, 1875
63...	New York	.....	7,000 00	14,000 00	.....	Dec. 1, 1875



64...	New York.....	.....	10,000 00	20,000 00	.....	Dec. 1, 1875
65...	New York.....	.....	5,000 00	10,000 00	.....	Dec. 1, 1875
66*	Kings.....	.....	1,500 00	30,000 00	.....	Dec. 1, 1875
68*	Kings.....	.....	4,500 00		.....	Dec. 1, 1875
69...	Kings.....	.....	1,500 00		.....	Dec. 1, 1875
72...	New York.....	.....	4,000 00	10,000 00	.....	Dec. 1, 1875
73...	New York.....	.....	15,000 00	37,500 00	.....	Dec. 1, 1875
76...	New York.....	.....	14,000 00	37,500 00	.....	Dec. 1, 1875
77...	New York.....	.....	15,000 00	37,500 00	.....	Dec. 1, 1875
79...	New York.....	.....	14,000 00	37,500 00	.....	Dec. 1, 1875
81...	New York.....	.....	7,000 00	14,000 00	.....	Dec. 1, 1875
83...	Kings.....	.....	5,000 00	14,000 00	.....	Dec. 1, 1875
84...	New York.....	.....	10,000 00	25,000 00	.....	Dec. 1, 1875
85...	Kings.....	.....	3,000 00	7,500 00	.....	Dec. 1, 1875
88...	New York.....	.....	10,000 00	35,000 00	.....	Dec. 1, 1875
89...	Kings.....	.....	5,000 00	10,000 00	.....	Dec. 1, 1875
90...	Kings.....	.....	5,000 00	10,000 00	.....	Dec. 1, 1875
91...	Kings.....	.....	5,000 00	10,000 00	.....	Dec. 1, 1875
92...	Kings.....	.....	4,500 00	30,000 00	.....	Dec. 1, 1875
93...	Kings.....	.....	3,300 00	6,600 00	.....	Dec. 1, 1875
94...	Kings.....	.....	3,300 00	6,600 00	.....	Dec. 1, 1875
99...	Kings.....	.....	2,500 00	7,500 00	.....	Dec. 1, 1875
102...	Kings.....	.....	500 00	1,000 00	.....	Dec. 1, 1875
103...	Kings.....	.....	8,000 00	16,000 00	.....	Dec. 1, 1875
104...	New York.....	.....	20,000 00	50,000 00	.....	Dec. 1, 1875
105...	New York.....	.....	6,000 00	12,000 00	.....	Dec. 1, 1875
108...	New York.....	.....	5,000 00	10,000 00	.....	Dec. 1, 1875
110...	New York.....	.....	6,000 00	12,000 00	.....	Dec. 1, 1875
111...	New York.....	.....	6,000 00	12,000 00	.....	Dec. 1, 1875

## SCHEDULE A — (Continued).

No.	County where mortgaged premises are located.	In what city, village or town.	Principal unpaid.	Estimated value of mortgaged premises.	Rate of interest.	Date of last payment of interest.
112...	New York.....	.....	\$6,000 00	\$12,000 00	....	Dec. 1, 1875
113...	Kings.....	.....	15,000 00	37,500 00	....	June 1, 1875
114...	New York.....	New York.....	10,000 00	20,000 00	....	Dec. 1, 1875
115...	New York.....	.....	7,000 00	15,000 00	....	Dec. 1, 1875
116...	Kings.....	.....	6,000 00	15,000 00	....	Dec. 1, 1875
117...	New York.....	.....	12,000 00	25,000 00	....	Dec. 1, 1875
118...	New York.....	.....	8,000 00	16,000 00	....	Dec. 1, 1875
119...	New York.....	.....	9,000 00	18,000 00	....	Dec. 1, 1875
120...	New York.....	.....	5,000 00	10,000 00	....	Dec. 1, 1875
121...	Kings.....	.....	16,000 00	40,000 00	....	June 1, 1875
122...	New York.....	.....	5,000 00	15,000 00	....	Dec. 1, 1875
123...	Kings.....	.....	4,500 00	10,000 00	....	.....
124...	Kings.....	.....	1,000 00	40,000 00	....	June 1, 1875
125...	New York.....	.....	5,000 00	10,000 00	....	June 1, 1875
126...	Kings.....	.....	2,000 00	4,000 00	....	Dec. 1, 1875
127...	Kings.....	.....	2,000 00	4,000 00	....	Dec. 1, 1875
128...	Kings.....	.....	12,000 00	35,000 00	....	June 1, 1875
129...	Kings.....	.....	2,000 00	4,000 00	....	Dec. 1, 1875
130...	Kings.....	.....	3,500 00	7,000 00	....	Dec. 1, 1875
131...	New York.....	.....	3,000 00	7,500 00	....	Dec. 1, 1875
132...	New York.....	.....	7,000 00	14,000 00	....	June 1, 1875
133...	New York.....	.....	7,000 00	14,000 00	....	Dec. 1, 1875
134...	New York.....	.....	7,000 00	14,000 00	....	Dec. 1, 1875
135...	New York.....	.....	3,000 00	6,000 00	....	Dec. 1, 1875

138...	Kings.....	.....	10,000 00	20,000 00	.....	Dec. 1, 1875
139...	New York.....	.....	10,000 00	20,000 00	.....	Dec. 1, 1875
140...	New York.....	.....	7,000 00	14,000 00	.....	Dec. 1, 1875
141...	New York.....	.....	7,000 00	14,000 00	.....	Dec. 1, 1875
142...	New York.....	.....	8,500 00	17,000 00	.....	Dec. 1, 1875
143...	New York.....	.....	6,000 00	12,000 00	.....	Dec. 1, 1875
144...	New York.....	.....	6,000 00	12,000 00	.....	Dec. 1, 1875
145...	Kings.....	.....	3,200 00	6,400 00	.....	Dec. 1, 1875
146...	New York.....	.....	2,000 00	4,000 00	.....	Dec. 1, 1875
147...	New York.....	.....	2,000 00	4,000 00	.....	Dec. 1, 1875
148...	New York.....	.....	2,000 00	4,000 00	.....	Dec. 1, 1875
149...	New York.....	.....	2,000 00	4,000 00	.....	Dec. 1, 1875
151...	Kings.....	.....	1,800 00	3,600 00	.....	Dec. 1, 1875
152...	New York.....	.....	9,000 00	18,000 00	.....	Dec. 1, 1875
154...	Kings.....	.....	4,500 00	9,000 00	.....	Dec. 1, 1875
155...	New York.....	.....	5,000 00	14,000 00	.....	Dec. 1, 1875
156...	New York.....	.....	10,000 00	25,500 00	.....	June 1, 1875
157...	New York.....	.....	10,000 00	25,500 00	.....	Dec. 1, 1875
158...	New York.....	.....	10,000 00	25,500 00	.....	Dec. 1, 1875
159...	New York.....	.....	10,000 00	22,500 00	.....	Dec. 1, 1875
160...	New York.....	.....	10,000 00	22,500 00	.....	Dec. 1, 1875
161...	Kings.....	.....	2,000 00	4,000 00	.....	June 1, 1875
162...	Kings.....	.....	1,500 00	3,500 00	.....	June 1, 1875
163...	New York.....	.....	5,000 00	12,500 00	.....	Dec. 1, 1875
164...	Kings.....	.....	6,000 00	14,000 00	.....	Dec. 1, 1875
166...	New York.....	.....	11,000 00	25,000 00	.....	Dec. 1, 1875
168...	Kings.....	.....	2,250 00	6,000 00	.....	Dec. 1, 1875
169...	Kings.....	.....	2,250 00	6,000 00	.....	Dec. 1, 1875
170...	New York.....	.....	8,000 00	24,000 00	.....	Dec. 1, 1775

## SCHEDULE A — (Continued).

No.	County where mortgaged premises are located.	In what city, village or town.	Principal unpaid.	Estimated value of mortgaged premises.	Rate of interest.	Date of last payment of interest.
171...	Kings.....	.....	\$5,000 00	\$11,000 00	....	June 1, 1875
173...	New York.....	.....	3,800 00	9,000 00	....	Dec. 1, 1875
174...	New York.....	.....	2,000 00	4,000 00	....	June 1, 1875
			\$616,650 00			

Please give estimated value of mortgaged premises in the cases of mortgage Nos. 67 and 68, and in the third column show where Kings county mortgaged premises are located.

All loans on Kings county are in the city of Brooklyn. We have no loans on Kings county out of Brooklyn limits.

\*In making loan we took assignment of previous mortgage.

## SCHEDULE B.

## Stock investments.

NAME OF STOCK.	Rate of interest.	Actual cost.	Par value.	Estimated market value.	Date of last payment of interest.
Tennessee State *	6 pr. ct.	\$143,642 25	\$168,000 00	\$75,600 00	July 1, 1874
Alabama State *	8 pr. ct.	157,700 00	166,000 00	74,700 00	July 1, 1873
North Carolina State *	6 pr. ct.	74,550 00	114,600 00	35,526 00	Oct. 1, 1868
South Carolina State *	6 pr. ct.	90,050 00	155,000 00	51,150 00	July 1, 1872
Buffalo city. ....	7 pr. ct.	109,425 00	110,000 00	116,600 00	July 1, 1875
Rochester city. ....	7 pr. ct.	457,100 00	448,000 00	472,640 00	{ July —, 1875 Aug. —, 1875 Nov. —, 1875
Yonkers .....	7 pr. ct.	16,730 00	17,000 00	17,510 00	Aug. 1, 1875
Morrisania N. Y. ....	7 pr. ct.	3,000 00	3,000 00	3,300 00	Mar. 9, 1875
Wallabout (Brooklyn) .....	7 pr. ct.	9,975 00	10,000 00	10,800 00	July 1, 1875
Oswego City. ....	7 pr. ct.	247,840 00	256,500 00	266,760 00	{ July 1, 1875 Oct. 1, 1875
		\$1,310,012 25	\$1,448,100 00	\$1,124,586 00	

\* Please give a description of these bonds, date of issue, issued for what purpose, and date of redemption. Also show the year of maturity of the city bonds. Please refer to the authority for the market value given.

## RECAPITULATION OF STOCK INVESTMENTS.

*(Enumerated on Schedule B.)*

Enumerate stocks in the following order, and give footings to each class, viz : 1. United States stocks and interest bearing treasury notes or certificates. 2. New York State Stocks. 3. Stocks of other States. 4. Stocks or bonds of cities in this State. 5. Stocks or bonds of counties. 6. Stocks or bonds of towns. 7. Stocks or bonds of villages. 8. Any other stocks or bonds.

NAME OF STOCK.	Rate of interest.	Actual cost.	Par value.	Estimated market value.
United States stocks or interest-bearing notes or obligations .....	.....	.....	.....	.....
New York State Stocks.....	.....	.....	.....	.....
Stocks or bonds of other States.....	.....	\$465,942 25	\$603,600 00	\$236,976 00
Stocks or bonds of cities in this State. ....	.....	844,070 00	844,500 00	887,610 00
Stocks or bonds of counties in this State .....	.....	.....	.....	.....
Stocks or bonds of towns in this State .....	.....	.....	.....	.....
Stocks or bonds of villages in this State .....	.....	.....	.....	.....
Other stocks or bonds .....	.....	.....	.....	.....
		<u>\$1,310,012 25</u>	<u>\$1,444,100 00</u>	<u>\$1,124,586 00</u>

## SCHEDULE D.

*Cash deposited in banks or trust companies.*

NAME OF BANK OR TRUST COMPANY.	Amount on deposit.	At what rate of interest.
Chatham National Bank.....	\$7,771 99	3 per cent.
Oriental Bank .....	62,701 44	3 per cent.
Manufacturers and Merchants' Bank...	7,628 14	4 per cent.
.	\$78,101 57	

## SCHEDULE E—No. 2.

*Assets of every description not heretofore enumerated.*

Excess of market value of stock investments over costs,	
Accrued interest on bonds and mortgages.....	\$3,596 20
Accrued interest on stock investments, such interest not being in arrears six months, nor included in the mar- ket value of stocks as shown by Schedule B.....	*28,750 73
Accrued interest on loans and deposits.....	
Interest due on bonds and mortgages not in arrears six months.....	2,936 50
Interest due on stock investments not in arrears six months.....	
Interest due on loans and deposits not in arrears six months.....	
Suspense account .....	†39,127 07
Judgment secured by real estate.....	5,345 48
	<u>\$79,764 98</u>

*Statement in detail of Schedule E.*

Bonds and mortgages \$616,650, one month, \$3,596 20	
Bonds and mortgages Nos. 19, 47, 113, 121, 124, 125, 128, 132, 156, 161, 162, 171, 174	2,936 50
	<u>\$6,532 70</u>

\*Please furnish the statement of this in detail. This amount, of course, should include no interest covered by the market value.

†Also please furnish a list of the items composing this amount. Please describe the nature of these debts, and state as to the probability of recovery thereon.

Rochester city's May and November, \$6,000 two months .....	\$70 00
Rochester city's January and July, \$392,000 six months .....	13,720 00
Rochester city's February and August, \$50,000 five months .....	1,458 33
Oswego city's, January and July, \$237,000 six months, .....	8,295 00
Oswego city's, April and October, \$19,500 three months .....	341 25
Buffalo city's, January and July, \$110,000 six months, .....	3,850 00
Yonkers, February and August, \$17,000 five months. .	495 82
Morrisania. March 9, 1875, \$3,000 nine month and twenty-two days .....	170 33
Wallabout, Brooklyn, January and July, \$10,000 six months .....	350 00
	<hr/>
	\$35,283 43
	<hr/>

*Suspense account.*

Represents a balance due the bank on a former loan. Assets of the debtor are now in process of collection by which this balance will be wholly paid.

*Judgment secured by real estate.*

This judgment is for a deficiency arising on a foreclosure by the bank. It is secured by an attachment now in force on real estate, for which present owner paid \$30,000. Our sale has been postponed from time to time by devices and requests of judgment debtor. It now stands advertised by sheriff for March 1, 1876. The proceeds of this sale will pay the judgment.

SCHEDULE F.

*Payments on account of expenses during 1875.*

Salaries, viz.:

President .....	\$3,000 00
Secretary .....	3,000 00
Book-keeper .....	2,000 00
Teller .....	1,649 94
Clerk .....	114 00
Janitor .....	1,150 00
Watchman, 'night,' \$1,200; 'Sunday,' \$500 .....	1,700 00
Examiners, Chas. Roberts, Wm. V. LeCount, .....	1,600 00
Substitutes, vacations of employees .....	258 71
	<hr/>
	\$14,472 65



Rent, \$— ; repairs, \$—.

Furniture and fixtures.....	\$138 03
Printing, advertising, stationery and blank-books.....	1,251 15
Fuel and lights.....	359 12
Taxes, State, county, town, village and city.....	882 00
Taxes, United States.....	2,408 79
Other expenses, viz. :	
Petty expenses.....	501 05
Bank department draft.....	71 77
Attorneys' bills.....	335 75
Insurance on 283 Bowery.....	115 00
	<hr/>
	\$20,535 31

Petty cash items are made up of such things as lunches for our board and committee meetings, scrubbing and cleaning bank, postage stamps, newspapers, car fares, etc., etc.

Nothing is included in petty cash but such minor matters as above indicated. At the end of each month a check is drawn, by which the month's total becomes charged in our general expense account.

#### SCHEDULE G.

##### *Statistical Information.*

1. Number of open accounts January 1, 1876.....	4,417
2. Number of accounts opened during the year 1875 }	
3. Number of ac'ts reopened during the year 1875 }	467
4. Number of accounts closed during the year 1875..	997
5. Amount deposited, including interest credited, during the year 1875.....	\$600,531 49
6. Amount of deposits withdrawn during the same period.....	1,050,623 61
7. Amount of interest credited to depositors for the year 1875.....	126,887 82
8. Amount of each semi-annual credit of interest for the year 1875, and when credited :	
June 30.....	69,875 20
December 31.....	57,012 62
Credited at other periods during the year.....	None.
Paid, but not credited during the year ..	None.
9. Amount of extra dividends, if any, and when credited.....	None.
10. Amount of the largest single deposit, exclusive of interest.....	7,700 00

11. Average amount of each deposit January 1, 1876..	\$447 00
12. Market value of real estate, viz. :	
Banking-house and lot.....	100,000 00
Other real estate.....	53,000 00
13. Rate per cent of dividends or interest to depositors during the past year, six per cent.	

---

Tennessee State bonds (registered), issued 1859, 1866, 1867, 1868, 1873 ; \$79,000 mature 1892 ; \$50,000 mature in 1898 ; \$39,000 mature 1914. Straight State bonds, purpose not stated in bonds.

Alabama State bonds, issued 1870 ; due 1900. Straight State bonds to aid Montgomery and Eufaula Railroad Company.

South Carolina State bonds, issued 1869 ; \$155,000 due 1888. For conversion of State securities (registered).

PROCURED BY GEO. W. REID FROM MORAN, BROKER, NEW YORK CITY.

*Bonds of the State of North Carolina.*

Issued 1866, due 1900.	To pay debt contracted before the war.
Issued 1868, due 1898.	Funding interest on debt.
Issued 1857, due 1887.	To Atlantic and North Carolina Railroad Company.
Issued 1856, due 1886.	To Atlantic and North Carolina Railroad Company.
Issued 1855, due 1885.	To North Carolina Railroad Company.
Issued 1867, due 1897.	To Western North Carolina Railroad Co.
Issued 1868, due 1898.	To Western North Carolina Railroad Co.
Issued 1868, due 1898.	To amend charter Chatham Railroad.
Issued 1867, due 1892.	To Wilmington, Charlotte and Rutherford Railroad.
Issued 1854, due 1884.	To State bond, no purpose named.

*North Carolina State Bonds.*

\$13,100, issued 1866, due 1900.	To pay debt contracted before war.
54,500, issued 1868, due 1898,	Funding interest on debt.
\$3,000, issued 1857, due 1887.	To Atlantic and North Carolina Railroad Company.
1,000, issued 1856, due 1886.	To Atlantic and North Carolina Railroad Company.
4,000, issued 1855, due 1885.	To North Carolina Railroad Co.
11,000, issued 1867, due 1897.	To Western North Carolina Railroad Company.

- 15,000, issued 1868, due 1898. To Western North Carolina Railroad Company.  
 11,000, issued 1868, due 1898. To amend charter Chatham Railroad.  
 1,000, issued 1867, due 1892. To Willmington Charlotte and Ruth-  
 eford Railroad.  
 1,000, issued 1854, due 1884. State bond, no purpose named.  
 All of the above are straight State bonds.

#### EXPLANATION OF REAL ESTATE ITEM.

Mortgaged property foreclosed and bought in by bank:

Gave our check (see payments) for.....	\$5,850 00
Received referee's check for.....	5,029 29
Balance.....	<u>\$820 71</u>

Represented costs and expenses, for which bank holds a deficiency judgment.

#### EXPLANATION OF 'RECEIVED BY LOANS ON STOCKS, ETC.'

In December bank borrowed on collaterals.....	\$210,000 00
Repaid a portion as shown under 'payments'.....	130,000 00
Balance owing by us.....	<u>\$80,000 00</u>

Is shown under other 'liabilities.'

#### Cross-examination by Mr. McGUIRE:

Q. [Presenting paper.] Mr. Smith is that the corrected statement made by the bank? A. Yes, sir; that is corrected by the bank.

Mr. McGUIRE — Now we will offer the corrected statement of the bank. The same reads as follows:

*Report of the Mechanics and Traders' Saving Institution, an institution for savings, of its condition on the morning of the 1st day of January, 1876, made to the Superintendent of the Banking Department, as required by chapter 371 of the Laws of 1875.*

#### RESOURCES.

1. Bonds and mortgages as shown by Schedule A, hereto annexed..... \$616,650 00
2. Stock investments, as shown by Schedule B, hereto annexed, cost .... 1,310,012 25
3. Amount loaned on stocks, as authorized by section 27, chapter 371, Laws of 1875, as shown by Schedule C, hereto annexed .....

4. Banking-house and lot, at cost .....	\$79,093 50
5. Other real estate, at cost .....	58,748 06
7. Cash on deposit in banks or trust companies, as shown by Schedule D, hereto annexed .....	78,101 57
8. Cash on hand .....	15,000 00
9. Amount of all other assets, the particular items of which are set forth in Schedule E, hereto annexed .....	79,764 98
	<hr/>
	\$2,237,370 36
	<hr/>

## LIABILITIES.

1. Amount due depositors.....	\$1,977,572 42
Principal .....	\$1,920,559 80
Interest credited for the six months ending January 1, 1876.....	57,012 62
2. Other liabilities, viz.: Excess of cost over market values, etc .....	185,426 25
3. Other liabilities, viz.: Loan on Rochester city bonds ... ..	80,000 00
	<hr/>
	\$2,242,998 67
4. Excess of liabilities .....	5,628 31
	<hr/>
	\$2,237,370 36
	<hr/>

## CASH TRANSACTIONS DURING THE YEAR 1875.

*Receipts.*

Cash on hand and in bank or trust companies Janu- ary 1, 1875, before transactions of that day.....	\$428,213 08
From depositors.....	473,643 67
From interest on loans, deposits and investments.....	130,861 74
From all other profits, viz.: Premiums, \$5,128.51 ; rents, \$2,370.16.....	7,498 67
From mortgages, paid, called in, or foreclosed.....	108,000 00
From redemption of stocks.....	460,925 00
From loans repaid.....	
From other sources, viz.: Real estate, \$5,029.29 ; by loans on stocks, \$210,000.....	215,029 29
	<hr/>
	\$1,824,171 45
	<hr/>

This is in pencil: Excess of market value of our real estate over its cost is 15,158.44. This, if allowed us, would *reduce* our liabilities by just *that amount*. It is not allowed us and so does not appear.

*Payments.*

To depositors, including interest paid to them.....	\$1,050,623 61
For loans on bonds and mortgages.....	2,000 00
For loans on stocks and other securities.....	130,000 00
For stocks and bonds purchased, par value, \$476,500,	516,415 00
For real estate purchased.....	5,850 00
For interest, not included in payments to depositors,	3,615 89
For expenses, as shown by Schedule F, hereto annexed.....	20,535 31
Other payments, viz.: Expenses of real estate, taxes, insurance, repairs.....	2,030 07
Cash on hand and in bank December 31, 1875, after the transactions of the day.....	93,101 57
	<hr/>
	\$1,824,171 45
	<hr/>

STATE OF NEW YORK, }  
COUNTY OF NEW YORK. } ss.:

Alfred T. Conklin, president, and Henry C. Fisher, secretary of the Mechanics and Traders' Savings Institution, an institution for savings, organized under the laws of the State of New York, located and doing business at No. 283 Bowery, in the city of New York, being duly sworn, each for himself, saith that the foregoing report of resources and liabilities and cash transactions, and the schedules accompanying this report, designated respectively, are in all respects a true statement of the condition of the said institution before the transaction of any business on the morning of the 1st day of January, 1876, in respect to each and every of the items and particulars therein specified.

A. T. CONKLIN,  
*President.*  
H. C. FISHER,  
*Secretary.*

Severally subscribed and sworn }  
by both deponents, the 1st day }  
of February, 1876, before me. }

GEO. N. PRATT,  
*Notary Public, Westchester Co.*

STATE OF NEW YORK, }  
COUNTY OF NEW YORK. } ss. :

Charles Roberts, William V. Le Count and Charles I. Kane, being duly sworn, each for himself, saith that he is one of a committee of three, regularly appointed by the trustees of the Mechanics and Traders' Savings Institution, an institution for savings, located and doing business in the city of New York. That such committee made an examination of the books, vouchers and assets of said institution for savings (as provided and directed by section 45 of chapter 371 of the Laws of 1875), and that the within statement of assets is a true statement of the value of such assets in possession of and owned by said institution on the morning of January 1, 1876, as appeared by the examination made by such committee, in pursuance of section 45 of the law above cited.

CHAS. ROBERTS.  
W. V. LE COUNT.  
CHAS. I. KANE.

Subscribed and sworn by each }  
deponent, before me, this 31st }  
day of January, 1876. }

GEO. N. PRATT,  
*Notary Public, Westchester Co."*

That report you will perceive shows a surplus of \$9, 530.13. It was sent back by Mr. Lamb, for correction. The bonds, as you will see, were not classified. The report was returned corrected. There appeared to be a deficiency of assets of about \$6,000—and this was shown to Mr. Ellis; and it appears Mr. Lamb and Mr. Ellis, had some conversation about this report of January, 1876. The next thing we come to is the regular report of March, 1876, by Mr. Reid. That was a regular report, showing a deficiency of assets of \$91,000.

ASSETS AND LIABILITIES of the Mechanics and Traders' Savings Bank upon the 7th day of March, 1876, as found upon examination made by the direction and authority of the Superintendent of the Bank Department.

	Rate of interest.	Amount at par.	MARKET VALUE.*		Totals.
			Rate.	Amount.	
Bonds and mortgages.....	7	.....	....	.....	\$436,650 00
Tennessee State bonds, old.....	6	\$129,000 00	45½	\$56,115 00	
Tennessee State bonds, new.....	6	39,000 00	41	15,990 00	*3,600 00
Alabama State bonds, Montgomery and Eufa. R. R.....	8	166,000 00	32	53,120 00	*21,600 00
North Carolina State bonds, various.....	6	114,600 00	11½	12,892 50	*22,700 00
South Carolina State bonds.....	6	155,000 00	31	48,050 00	*3,100 00
Brooklyn city bonds.....	7	10,000 00	108	10,800 00	
Rochester city bonds, various.....	7	248,000 00	108	267,840 00	
Buffalo city bonds.....	7	70,000 00	106	74,200 00	
Oswego city bonds.....	7	256,000 00	102	261,630 00	
Yonkers city bonds.....	7	9,000 00	105	9,450 00	
Morrisania town bonds.....	7	3,000 00	110	3,300 00	
Banking-house, cost.....	....	.....	....	.....	813,387 50
Real estate, 227 East Forty-fifth street, cost.....	....	.....	....	\$17,183 86	79,093 50
Real estate, 30 President street, Brooklyn, cost.....	....	.....	....	26,226 72	
Real estate, 32 President street, Brooklyn, cost.....	....	.....	....	8,615 85	
Real estate, 851 Atlantic avenue, Brooklyn, cost.....	....	.....	....	6,721 63	
Judgment claim and interest to first January.....	....	.....	....	.....	58,748 06
Bankruptcy claim.....	....	.....	....	.....	5,354 40
Cash in vault.....	....	.....	....	\$20,000 00	10,000 00

\*In pencil.

## ASSETS AND LIABILITIES — (Continued).

	Rate of interest.	Amount at Par.	MARKET VALUE.		Totals.
			Rate.	Amount.	
Cash in Chatham National Bank.....	3	.....	....	270,551 44	
Cash in Oriental Bank.....	3	.....	....	37,052 95	
Cash in Manufacturers and Merchants' Bank.....	4	.....	....	40,133 15	
Interest accrued.....	....	.....	....	.....	267,737 54
					17,050 00
					\$1,688 021 00
LIABILITIES.					
Due depositors.....	....	.....	....	\$1,670,919 39	
Due Vermilye & Co. for loan.....	....	.....	....	90,000 00	
Interest accrued.....	....	.....	....	19,000 00	
					1,779,919 39
Deficiency of assets.....	....	.....	....	.....	\$91,898 39



ANNUAL INCOME from the investments of the Mechanics and Traders' Savings Bank as they were found upon examination made on the 7th day of March, 1876, and the annual charges thereon at current rates or estimated on the basis of 1875.

INVESTMENTS.	Rate of interest.	Amount at par.	Revenue.	Totals.
Bonds and mortgages.....	7	\$436, 650 00	\$30, 565 50	
City and town bonds.....	7	596, 500 00	41, 755 00	
Cash in bank.....	3	207, 600 00	6 228 00	
Cash in bank.....	4	40, 133 00	1, 605 32	
Additional interest on \$150, 000 to be invested.....	....	.....	6, 000 60	\$86, 153 82
CHARGES.				
Interest to depositors.....	....	.....	\$98, 900 00	
Interest on loans.....	....	.....	6, 300 00	
Salaries.....	....	.....	7, 020 00	
Internal revenue tax.....	....	.....	1, 600 00	
Other taxes.....	....	.....	882 00	
All other charges.....	....	.....	2, 000 00	116, 702 00
Deficiency of income.....	....	.....	.....	\$30, 548 18

That was a regular report, and showed a deficiency of assets, of \$91,898.39, and a deficiency of income of \$30,548.18. It was accompanied by the following letters :

Hon. D. C. ELLIS, *Superintendent Bank Department* :

SIR.—The undersigned, appointed to examine into the condition, working, etc., of the Mechanics and Traders' Savings Bank of New York, report :

From the accompanying papers it will be seen that there is a deficiency of assets of \$91,898.39, counting their real estate at cost, and a deficiency of income of \$30,548.18:

The rate of interest paid to depositors averages 5.94 per cent on the last three payments of six per cent dividends on all sums ; the largest in the State, by at least thirty per cent. This *may* arise from there being a larger amount due depositors than appears from the general ledgers. There has been no abstract taken from the dealers' ledgers for some years to test the accuracy of the general ledger.

Respectfully submitted,

GEO. W. REID.

Examined March 7, 1876, and subsequent days.

NEW YORK, *March 11, 1876.*

Hon. D. C. ELLIS :

DEAR SIR.—I am going to the Mechanics and Traders' on Monday. So far I find a deficiency of about \$28,000, but I think there is an error in amount due depositors, which will swell the deficiency to \$100,000, and the deficiency of income is at least \$26,000. Their N. Carolina bonds, 114,600 only average  $11\frac{1}{4}$ .

Yours truly,

GEO. W. REID.

Q. Now read the next letter ? A.

NEW YORK, *March 15, 1876.*

Hon. D. C. ELLIS :

DEAR SIR.—The Mechanics and Traders' deficiency is about what I suppose it would be, from analyzing their report. I am not exactly satisfied that the amount due depositors is correct, as they say they have been too 'short-handed' to take off the balances for some years. I can't see why the *rate* paid for dividend should be so large (5.94), unless the amount due depositors is larger than reported. Other banks that pay six per cent *on all amounts* rarely average more than 5.50.

Truly yours,

GEORGE W. REID.

Q. Give the next letter? A.

NEW YORK, *May 26, 1876.*

Hon. D. C. ELLIS, *Superintendent, etc.*:

DEAR SIR.—Called at Mechanics and Traders' this morning. The balance from deposit ledgers *not yet finished*, although Fisher says they have been at work *nearly two months*. The general ledger shows \$1,400,000 due depositors. The longer they keep on the worse it will be for the last that remains at the closing up. They are still demanding the sixty days on payments, and I am surprised there is no run upon them; but *dividend day* will probably bring on the crisis, unless they are closed by the Attorney-General before the time. If closed to-day, I don't believe would pay seventy-five cents on the dollar, even if amount depositors is correct.

Yours truly,

GEORGE W. REID.

NEW YORK, *June 14, 1876.*

Hon. D. C. ELLIS:

DEAR SIR.—I see Conklin says 'he is surprised at your proceeding against the Mechanics and Traders', as they can pay in full,' etc. That is all nonsense, and he knows it. They won't pay seventy-five, if they do seventy per cent.

Yours truly,

GEORGE W. REID."

Senators will see how Mr. Ellis' attention was called to this matter. Nothing was done until we get down to June first, which was nearly a month after the examination by Mr. Reid showing that large deficiency. Mr. Ellis writes to the Attorney-General, and the bank is closed, there was due depositors \$1,400,000; the number of depositors was 330. There was a difference in the ledgers of something like \$79,000. What we claim in regard to this matter is that Mr. Ellis omitted to have examinations made, and when examinations were made, and showed a deficiency, he paid no attention to them, and the result was a large deficiency and loss to the depositors.

The "Abingdon Square Savings Bank," is next in order. First comes the report of Aldrich and Reid, examiners, dated December 1st and 2d, 1873, which is as follows:

## ABINGDON SQUARE — DECEMBER FIRST AND SECOND.

	Rate of interest.	Amount at par.	MARKET VALUE.		Totals.
			Rate.	Amount.	
Bonds and mortgages.....					
U. S. 5-20, 1864.....	.7	.....	....	.....	\$92,780 00
U. S. 5-20, new, 1865.....	.6	\$5,000 00	111	\$5,550 00	
U. S. 5-20, old, 1865.....	6	4,000 00	114½	4,570 00	
	6	9,500 00	115	10,925 00	
Safe and fixtures.....					21,045 00
Revenue stamps .....					4,240 17
Cash in safe.....					150 00
Cash in Eighth National Bank.....				\$1,837 35	
Cash in Ninth Ward Bank.....				3,762 51	
Cash in Loaners' Bank.....				1,000 00	
				32,616 45	
Interest accrued.....					39,216 31
Deficiency of assets.....					4,717 00
					1,567 23
Due.....					\$163,635 71
One thousand and eighty depositors.....				.....	
Interest accrued.....				\$160,295 71	
				3,340 00	
					163,635 71
INCOME.					
Bonds and mortgages.....		92,700 00	7	\$6,489 00	
U. S. gold.....		18,500 00	6	1,110 00	
Premium on do.....		1,110 00	165	55 50	

Cash in bank.....	.....	37,380.00	6	2,242 80	9,897 30
Deficiency of income.....	.....	.....	....	.....	1,802 70
					<u>\$11,700 00</u>
CHARGES.					
Interest to depositors.....	.....	.....	....	\$8,100 00	
Salaries.....	.....	.....	....	1,500 00	
Rent.....	.....	.....	....	800 00	
Internal revenue tax.....	.....	.....	....	60 00	
All other charges.....	.....	.....	....	1,240 00	11,700 00

Senators will notice a deficiency of assets of \$1,567.23, and a deficiency of income of \$1,802.20. There was an alleged deposit in the Loaners' Bank of \$31,824.60, which may have been there, but which we have been unable to find any trace of in that bank. Also United States bonds of \$21,045 we have not been able to find. No attention whatever was paid to this report by Mr. Ellis, in any way or shape, and nothing was done at or about this bank until about two years subsequently, when, on November 4, 1875, a regular examination was made by Mr. Reid. There were some intermediate reports made by the bank, showing a small surplus of assets, and in one case, a very suspicious circumstance, the loan to the Loaners' Bank of \$31,824.60, July 1, 1874, at six per cent. Those reports should have been scrutinized by the department, and it was Mr. Ellis' duty to have made a special examination, and informed himself about the condition of the bank. At any rate nothing was done, and we are obliged to take the records of the department for our information until November, 1875, when there was a regular report by Mr. Reid, which was as follows :

“Hon. D. C. ELLIS, *Superintendent Bank Department* :

SIR. — The undersigned, appointed to examine into the condition, working, etc., of the Abingdon Square Savings Bank, reports :

The officers of this bank have recently exchanged real estate bid in on a foreclosure in Brooklyn, for other property here, which has been sold at a profit, and purchase-money mortgages taken and the lots been built upon. The exchange appears to have been made in good faith, although forbidden by their charter ; and as the loans are said to be amply secured, there is an apparent surplus of \$4,424.

The trustees have given their individual notes to the president to the amount of \$10,000, as an additional security to protect the depositors against any loss.

Respectfully submitted,

GEO. W. REID.

Examined November 4, 1875.”

Senator SPRAGUE — I desire to ask whether it appeared, in order to make up that surplus of assets, that those trustees' notes were included ?

Mr. OLMSTEAD — They were, sir, trustees' notes of \$10,000 were put in. I do not know as I should say they were in the report as a part of the assets. I will not say how that was, at this moment.

Mr. TRACY — It is in one of the schedules.

Mr. OLMSTEAD — It seems there was some necessity for those notes being given. I cannot say at this moment, for I have not the full report here.

I now call the attention of the Senate to the report made by the bank January 1, 1876, which was as follows :

*Report of the Abingdon Square Savings Bank, an institution for savings, of its condition on the morning of the 1st day of January, 1876, made to the Superintendent of the Banking Department, as required by chapter 371 of the Laws of 1875.*

#### RESOURCES.

1. Bonds and mortgages, as shown by Schedule A, hereto annexed.....	\$77,000 00
2. Stock investments as shown by Schedule B, hereto annexed, cost.....	
3. Amount loaned on stocks, as authorized by section 27, chapter 371, Laws of 1875, as shown by Schedule C, hereto annexed.....	
4. Banking-house and lot at cost.....	
5. Other real estate at cost.....	36,977 64
7. Cash on deposit in banks or trust companies, as shown by Schedule D, hereto annexed.....	5,663 48
8. Cash on hand.....	25,220 16
9. Amount of all other assets, the particular items of which are set forth in Schedule E, hereto annexed.....	6,049 24
	<hr/>
	\$150,910 52
	<hr/>

#### LIABILITIES.

1. Amount due depositors.....	\$143,702 94
Principal.....	\$140,401 29
Interest credited for the six months ending January 1, 1876.....	3,301 65
2. Other liabilities, viz.....	
3. Excess of assets over liabilities.....	7,207 58
	<hr/>
	\$150,910 52
	<hr/>

## CASH TRANSACTIONS DURING THE YEAR 1875.

*Receipts.*

Cash on hand and in bank or trust companies, Jan. 1, 1875, before the transactions of the day.....	\$54,483 23
From depositors.....	125,537 12
From interest on loans, deposits and investments.....	6,539 69
From all other profits, viz.: Premiums, \$ ; rents, \$267.....	267 00
From mortgages paid, called in or foreclosed.....	32,700 00
From redemption of stocks.....	
From loans repaid.....	
From other sources, viz.: On sales of real estate held by the bank.....	16,329 18
	<hr/>
	\$235,856 22
	<hr/>

*Payments.*

To depositors, including interest paid to them.....	\$165,229 63
For loans on bonds and mortgages.....	18,000 00
For loans on stocks and other securities.....	
For stocks and bonds purchased, par value, \$	
For real estate purchased.....	17,769 17
For interest not included in payments to depositors,	
For expenses, as shown by Schedule F, hereto annexed,	3,973 78
Other payments, viz .....	
Cash on hand and in bank December 31, 1875, after the transactions of the day.....	30,883 64
	<hr/>
	\$235,856 25
	<hr/>

STATE OF NEW YORK, }  
COUNTY OF NEW YORK. } ss.:

Charles A. Schumacher, president, and George W. Brown, secretary, of the Abingdon Square Savings Bank, an institution for savings, organized under the laws of the State of New York, located and doing business at No. 23 Abingdon square, in the city of New York, being duly sworn, each for himself, saith that the foregoing report of resources and liabilities and cash transactions, and the schedules accompanying this report designated respectively, A, B, C, D, E, F and G, are, in all respects, a true statement of the condition of said institution before the transactions of any business on the



morning of the 1st day of January, 1876, in respect to each and every of the items and particulars therein specified.

CHARLES A. SCHUMACHER,

*President.*

GEORGE W. BROWN,

*Secretary.*

Severally subscribed and sworn by both }  
deponents, the 28th day of January, }  
1876, before me.

[L. S.]

BEEKMAN S. BURNHAM,

*Notary Public.*

That report, you will notice, shows a surplus of assets of \$7,277.58. The peculiarity of the report of January 1, 1876, is that it was a fraudulent report, in that there were a quantity of bogus checks counted in as assets, which will appear by reference to the letter of Mr. Reid of July 6, 1876, which reads as follows :

“NEW YORK, July 6, 1876.

Hon. D. C. ELLIS :

DEAR SIR.—After I left you at the Jo. City Bk. I went down to the Abingdon Square S. Bk. January first they reported assets, \$150,910.52 ; surplus, \$7,207.50. The secretary, Brown, was not in ; but the June first statement shows :

Due Depositors . . . . .	\$94,540 62
Due loan . . . . .	8,359 60
	<hr/>
	\$102,900 22

Assets :

Bonds and mortgages . . . . .	\$43,800 00
Real estate bid in . . . . .	38,411 50
Furniture and fixtures . . . . .	4,431 70
Cash . . . . .	9,473 05
	<hr/>
	95,116 25
	<hr/>
Deficiency . . . . .	6,783 97
	<hr/>

I think the accrued interest would add something to this amount. The amount due depositors now is about the same as June first.

GEO. W. REID.”

This letter was sent to Mr. Ellis at Rochester. It was deemed of sufficient importance by Mr. Lamb to send it to him. He returned in two or three days and gave the letter to Mr. Lamb without making any remark; simply gave it to him and went away. He did nothing.

I will now read the following letter of July 19, 1876:

“NEW YORK, *July* 19, 1876.

Hon. D. C. ELLIS:

DEAR SIR.—In January, 1874, the secretary of Abingdon Square S. Bank, in order to make a better show, entered a bogus deposit of \$10,000, and counted it as so much cash in hand. When I discovered it a short time afterwards, I remonstrated and he promised not to do so again.

The same thing was done last January. The attorney, Edgar F. Brown, put in his check for \$5,000, his brother, D. T. B., 4,500, and the clerk 5,000. The secretary is absent from the city at present, but I find the clerk put in his check for 9,800, and counted it as cash for the July report. He has also entered real estate as more than 60,000, on which they owe a mortgage 5,000. The figures are not on the books, but furnished by the attorney.

The true figures, as shown by their monthly statement, are as follows:

July 1.	
Bonds and M.....	\$43,800 00
Furniture and fixtures.....	4,431 70
Real estate bid in.....	38,411 50
Cash.....	\$26,079 91
Less check.....	9,800 00
	<hr/>
	16,279 91
Apparent deficiency (without interest either way).....	7,125 39
	<hr/>
	\$110,048 50
	<hr/>
Due depositor (less 9,800 bogus).....	\$95,048 50
Loan for .....	15,000 00
	<hr/>
	\$110,048 50
	<hr/>

This loan is secured by *trustees' notes* and assigned B. and M.

The attorney is out of the city, and as soon as he returns next week I will see him.

I am going to Perth Amboy this afternoon; will return Monday.

Yours truly,

GEO. W. REID.”

Senators will notice how previous report was made up by putting in the bogus checks. Mr. Lamb handed this letter to Mr. Ellis; Mr. Ellis read it and handed it back and said nothing; Mr. Ellis then went to New Hampshire, and during his absence, Mr. Lamb reported the bank to the Attorney-General on the same information that Mr. Ellis had, while he was at the department, and the bank was closed on that letter before Mr. Ellis returned. Why he did not act on the information as Mr. Lamb did, is something we are not informed of, except simply that we have the fact.

After the suit was brought, there was some delay. The attorney for the bank desired delay, and this examination was made, and Mr. Reid came to the same conclusion as before, and the bank was wound up. The deficiency never was made up in fact, and Mr. Ellis, never informed himself whether it was or not. The bank was closed August 10, 1876. Amount due depositors, \$87,997.59; number of depositors, 857; amount realized from assets, \$18,000; dividend by receiver, fifteen per cent. They had second mortgages and mortgages made by the secretary to the bank. Some of those mortgages were made by the president of the bank to a third party, and that party assigned the mortgages to the bank and took the money on them. That is the condition of the bank. I will endeavor, Mr. President, to get along faster with the other banks.

The next bank I call your attention to, is "The German Savings Bank of Morrisania." The testimony will be found on pages 299 and 310 before the committee, and pages 577 to 640, before the Senate. I call your attention to the report made by the bank, January 1, 1875:

*Report of the German Savings Bank of the town of Morrisania, N. Y., an incorporated institution for savings, of its condition on the 1st day of January, 1875, made to the Superintendent of the Banking Department, as required by chapter 136 of the Laws of 1857.*

#### FINANCIAL.

##### *Resources.*

1. Bonds and mortgages, as per Schedule A, hereto annexed.....	\$295,150 00
2. Stock investments, as per Schedule B, hereto annexed.....	150,774 67
3. Amount loaned on public stocks, as per Schedule C, hereto annexed.....	

4. Amount loaned on stocks or bonds of private corporations, as per Schedule D, hereto annexed....	\$90,500 00
5. Amount loaned on personal securities, as per Schedule E, hereto annexed.....	
6. Real estate, cost \$12,166.73; market value \$15,000; standing on books at \$12,910.48.....	12,910 48
7. Cash on deposit in banks or trust companies, as per Schedule F, hereto annexed.....	30,478 17
8. Cash on hand not deposited in bank.....	16,952 48
9. Amount of assets not included under either of the above heads, the particular items of which are set forth in Schedule G, hereto annexed: fixtures of the bank, safes, etc.....	3,358 33
Accrued interest January 1, 1875. ....	25,902 54
	<hr/>
	\$626,026 67
	<hr/>

*Liabilities.*

1. Amount due depositors.....	\$598,673 86
Principal.....	\$584,056 88
Interest credited for the 1st of	
Jan., 1875.....	14,616 98
3. Excess of assets over liabilities.....	27,352 81
	<hr/>
	\$626,026 67
	<hr/>

## STATISTICAL.

1. Number of open accounts on the morning of January 1, 1875.....	2,911
2. Number of accounts opened during the year 1874,	512
3. Number of accounts closed during the year 1874,	476
4. Number of accounts opened since organization....	5,167
5. Amount deposited, not including interest credited, during 1874.....	\$1,521,165 77
6. Amount deposited, including interest credited, for the same period.....	1,549,647 99
7. Amount withdrawn during the year 1874.....	1,544,330 88
8. Amount of interest or profits received* during the year 1874.....	30,361 64

\*If amount received is reported strike out 'or earned'; if amount earned is reported, strike out 'received or.'

9. Amount of interest credited to depositors for the same period.....	\$28,482 22
10. Amount of each semi-annual credit of interest for the year 1874 and when credited, July 1, 1874, \$13,865.24 ; December 31, 1874, \$14,616.98....	28,482 22
Credited at other periods during the year.....	None.
11. Rate per cent of dividends or interest to depositors during the past year, six per cent.	

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You will notice this shows a surplus of assets of \$27,352.81.

I now call your attention to the examination made by Mr. Reid in April :

GERMAN SAVINGS BANK OF THE TOWN OF MORRISANIA, NEW YORK CITY.

*Examined April 24, 1875, and subsequent days, by Geo. W. Reid.*

ASSETS.	Rate of interest.	Amount at par.	Market Value.		Totals.
			Rate.	Amount.	
Bonds and Mortgages.....	7	.....	....	.....	\$283,450 00
New York city bonds.....	7	\$ 30,000 00	106	\$31,800 00	
New York city bonds.....	7	10,000 00	109	10,900 00	
Buffalo city bonds.....	7	40,000 00	102	40,800 00	
Morrisania town bonds.....	7	6,000 00	100	6,000 00	
West Farm town bonds.....	7	1,500 00	100	1,500 00	
Eastchester town bonds.....	7	12,000 00	100	12,000 00	
Rye town bonds.....	7	24,000 00	100	24,000 00	
Mamaroneck town bonds.....	7	1,000 00	100	1,000 00	
Pelham town bonds.....	7	9,000 00	100	9,000 00	
New Rochelle town bonds.....	7	5,000 00	100	5,000 00	177,270 00
Southfield town bonds.....	7	41,000 00	97	39,770 00	
Banking-house unfinished.....	....	.....	....	.....	20,684 11
Real estate, two houses bid in on foreclosure.....	....	.....	....	.....	8,583 94
Safe and fixtures.....	....	.....	....	.....	3,358 33
Cash in safe.....	....	.....	....	\$4,497 28	34,899 15
Cash in Germania Bank.....	4	.....	....	20,401 87	
Interest accrued.....	....	.....	....	.....	8,636 00
					\$536,881 53

## LIABILITIES.

Due depositors.....	.....	.....	.....	\$594,596 21	614,096 21
Interest accrued.....	.....	.....	.....	9,500 00	
Loan from Vermilye & Co.....	.....	.....	.....	10,000 00	
Deficiency of assets*.....	.....	.....	.....	.....	\$77,214 68

\*This deficiency has since been made good. (See report for January 1, 1876.)

GERMAN SAVINGS BANK OF THE TOWN OF MORRISANIA, NEW YORK CITY — (Continued).  
*Annual income and charges thereon.*

INVESTMENTS, ETC.	Rate of interest.	Amount at par.	Revenue.	Totals.
<b>INCOME.</b>				
Bonds and mortgages.....	7	\$285,450 00	\$19,841 50	
City and town bonds.....	7	175,000 00	12,250 00	
Cash in bank.....	4	25,400 00	1,016 00	
Estimated rent, net amount after paying interest on amount still due on banking-house.....	....	.....	1,600 00	\$34,707 50
<b>CHARGES.</b>				
Interest to depositors.....	....	.....	\$30,000 00	
Salaries.....	....	.....	2,600 00	
Internal revenue tax.....	....	.....	300 00	
Other taxes.....	....	.....	60 00	
All other charges.....	....	.....	646 00	
Excess of income.....	....	.....	.....	33,600 00
	....	.....	.....	\$1,107 50

There is an apparent deficiency of more than \$77,000 in assets. Nearly three years ago the former president made a loan of \$105,000 to the Montclair Railroad Company of New Jersey, on various collaterals. At the last examination your examiner called attention to this loan, as not authorized by the charter, and directed that it should be called in. A part of the loan was then paid, reducing it to \$90,500, when the company failed. It has been discovered that the president allowed the company to change the bonds which the bank originally held, for others of much less value (the trustees claim without their knowledge). The president resigned last year and a new set of officers were elected who appear determined to extricate the bank from the difficulty, and to save the depositors from loss. The collaterals now held could probably be sold for about \$25,000, leaving a deficiency of \$52,000.



These reports show a deficiency of about \$104,000. I think that should have been sufficient to have placed Mr. Ellis upon his guard.

Then comes a letter from Mr. Reid to Mr. Ellis, accompanying the last report, which reads as follows :

“ Hon. D. C. ELLIS, *Superintendent Bank Department* :

SIR.—The undersigned, appointed to examine into the condition, working, etc., of the German Savings Bank of Morrisania, report :

From the schedules annexed it will be seen that there is a deficiency of more than \$77,000 in assets. Nearly three years ago a loan of \$105,000 was made by the former president to the Montclair Railroad Company of New Jersey on various collaterals. At the last examination we called attention to this loan as not authorized by the charter, and directed that it should be called in. A part was paid, reducing the amount to \$90,500, when the company failed, and it now appears that the president had allowed the company to change the bonds held for those of much less value—the trustees say without their knowledge. The president resigned last year, and a new set of officers were elected, who appear determined to get the bank out of difficulty and see that the depositors are saved from loss. The collaterals now held for this loan could probably be sold for about \$25,000, leaving a deficiency of \$52,000.

There appears to have been some informality in the issue of the Southfield town bonds, Staten Island, which is now being tested in the courts.

Respectfully submitted,

GEO. W. REID.

Examined April twenty-fourth and subsequent days.”

The first thing done by Mr. Ellis in respect to this bank was a letter, written by him December 25, 1875, and Senators will bear in mind the report of Mr. Reid was April 24. He did nothing until December 25, 1875, and then he wrote the following letter :

“ STATE OF NEW YORK :

BANK DEPARTMENT,        )  
ALBANY, December 25, 1875. }

“ JACOB HELD, *President German Savings Bank, Morrisania* :

DEAR SIR.—It appears by the examiner’s report that there is a deficiency of assets in your institution to which my attention has been officially called. It is the settled policy of the department to close up savings institutions which have not an amount of clear assets with

which to meet their liabilities. Unless your deficiency is promptly made good, I shall feel constrained to act in your case.

Truly yours, etc.,

D. C. ELLIS,

*Superintendent."*

That letter was written in December, while the report of that large deficiency was made in the April previous. Then comes the report by the bank of January 1, 1876:

*Report of the German Savings Bank, of Morrisania of its condition on the morning of the 1st day of January, 1876, made to the Superintendent of the Banking Department, as required by chapter 371, Laws of 1875.*

#### RESOURCES.

1. Bonds and mortgages, as shown by Schedule A, hereto annexed.....	\$327,499 90
2. Stock investments, as shown by Schedule B, hereto annexed.....	90,750 22
3. Amount loaned on stocks, as authorized by section 27 chapter 371, Laws of 1875, as shown by Schedule C, hereto annexed.....	
4. Banking-house and lot at cost.....	46,495 11
5. Other real estate at cost.....	4,307 17
6. Cash on deposit in banks or trust companies, as shown by Schedule D, hereto annexed.....	25,941 89
7. Cash on hand .....	9,444 16
9. Amount of all other assets, the particular items of which are set forth in Schedule E, hereto annexed..	18,678 52
	<hr/>
	\$523,116 97
	<hr/>

#### LIABILITIES.

1. Amount due depositors.....	\$501,229 35
Principal.....	\$488,039 40
Interest credited for the six months ending January 1, 1876.....	13,189 95
2. Other liabilities, viz. : Loan from the Citizens' Insurance Company.....	10,000 00
3. Excess of assets over liabilities.....	11,887 62
	<hr/>
	\$523,116 97
	<hr/>

## CASH TRANSACTIONS DURING THE YEAR 1875.

*Receipts.*

Cash on hand and in bank or trust companies January 1, 1875, before transactions of that day.....	\$47,430 65
From depositors.....	1,253,746 37
From interest on loans, deposits and investments....	34,822 83
From all other profits, viz.: Premiums, \$2,338.08 ; rents, \$216; commission, \$372.75; collections, \$23.89.....	2,950 72
From mortgages paid, called in or foreclosed.....	21,650 00
From redemption of stocks, \$2,000; sold, \$162,566.95,	164,566 95
From loans repaid.....	79,682 80
From other sources, viz.: Sold property, \$5,065.56; sold furniture, \$3,358.33; loan from Citizens' Insurance Company, \$10,000.....	18,423 89
	<hr/>
	\$1,623,274 21
	<hr/>

*Payments.*

To depositors, including interest paid to them.....	\$1,379,350 37
For loans on bonds and mortgages.....	53,999 90
For loans on stocks and other securities.....	
For stocks and bonds purchased, par value, \$231,250,	104,542 50
For real estate purchased.....	42,957 36
For interest, not included in payments to depositors,	1,734 89
For expenses, as shown by Schedule F, hereto annexed.....	5,302 94
Other payments, viz.:	
Cash on hand and in bank December 31, 1875, after the transactions of the day.....	35,386 05
	<hr/>
	\$1,623,274 21
	<hr/>

STATE OF NEW YORK. }  
CITY AND COUNTY OF NEW YORK. } ss.:

Jacob Held, president, and William Hoeland, secretary of the German Savings Bank of the Town of Morrisania, an institution for savings, organized under the laws of the State of New York, located and doing business at One Hundred and Fifty-eighth street, in the city of New York, being sworn, each for himself, saith that the foregoing report of resources and liabilities and cash transactions, accompanying this report, designated respectively A, B, C, D, E, F and G, are in all respects, a true statement of the condition of the said insti-

tution before the transaction of any business on the morning of the 1st day of January, 1876, in respect to each and every of the items and particulars therein specified.

JACOB HELD,  
*President.*

WM. HOELAND,  
*Secretary.*

Severally subscribed and sworn }  
by both deponents, the 26th day }  
of January, 1876, before me. }

ERNEST HALL, *Notary Public.*

That report shows a surplus of assets of \$11,887.62. If that was a false and fraudulent report, and that Mr. Ellis should have discovered it appears from the minutes of the bank of January thirteenth, thirteen days after that report was made, in which they state that they are \$24,000 short. The bank itself, by its own resolution, states it is \$24,000 short.

*"Regular Meeting, held January 13, 1876.*

President Held reports that we were still short of the \$24,000 to make up the deficiency of the assets of the bank."

*"Special Meeting, held February 3, 1876.*

President Held states that something must be done to have more available funds."

*Regular Meeting, held July 13, 1876.*

On motion of Mr. Kuntz, it was

*Resolved,* That a dividend of six per cent, be declared on all sums from five dollars to \$5,000, which are deposited in the bank for three or six months previous to July 1, 1876, respectively, which was carried as follows:

Messrs. Kuntz, Thiel, Fritz, Zuegner, Frase, Freutel and Schmidt, all voting in the affirmative.

A communication was received from the Teutonic Savings Bank, in regard to the Southfield bonds, and states that the judge decided the case in favor of the commissioners and the bondholders.

On page 16:

*Regular Meeting, held August 10, 1876.*

President Held asks for information how and in which way the interest is to be paid on trustees' mortgages and cash advances.

On motion of Mr. Freedman, That all those trustees which advanced cash, the interest to be paid by the bank next New Years, and the interest on mortgages now and credited to the respective parties.

On page 17 :

*Special Meeting, held October 7, 1876.*

President Held states that a run had commenced on the bank, on which occasion he consulted and agreed with the vice-president to inforce the sixtieth clause or rule.

On motion the above rules were unanimously agreed to.

On motion of Mr. Freedman it was

*Resolved*, That a call be issued to the depositors, stating that the trustees of the bank will hold themselves personally responsible with all the property, and gaurantee the depositors their deposits in full, provided, however, that if the depositors will not draw money unnecessary, so the bank will not be compelled to sacrifice its securities, otherwise the depositors will sustain the loss themselves.

On page 19 :

*Regular Meeting, held October 12, 1876.*

Mr. Freutel reports that a note of \$5,000 was discounted by the Germania Bank, and the amount, less discount, was credited to our account.

Mr. Held reports that the vice-president of the Germania Bank, Mr. Wilkins, had examined our statement, also examined the different business accounts, and wanted \$25,000 more bonds placed in the Germania Bank as security for the amount we had on credit to our business accounts of our depositors.

Mr. Held offered all the Southfield bonds or mortgages, but was not accepted by Mr. Wilkins as sufficient gaurantee.

*Special Meeting, January 18, 1877.*

Mr. Freedman reported that he had conferred with Mr. Dechert, secretary in relation to the New York Midland bonds. The latter thinks it likely that we may recover something ; he desires, however, to get some more information as to how we came into possession of those bonds. On motion of Mr. Sigel, the matter was referred to a committee of two, consisting of Gen. Sigel and Mr. Freedman. The chair stated that that insurance of \$20,000 on the bank building expires February first. On motion of Gen. Sigel, resolved to insure hereafter the building at \$13,000, and furniture, fixtures and safes, \$2,000. The chair stated that we were pretty short in the Germania Bank as

well as in our savings bank, and that something must be done to keep the business agoing. On motion of Mr. Freedman, it was resolved to have a note of \$15,000, for three months, discounted by the Germania Bank, and that the indorsers receive an agreement of mortgages as collaterals for the amount of the note.

On page 227 the following :

*Meeting, February 8, 1877.*

On motion of Mr. Sigel, it was resolved that all new deposits shall be declared as safe deposits, and all the moneys that have not been booked shall be put separate until further action by the board.

On page 228 the following :

*Special Meeting, February 15, 1877.*

Mr. Fritz reported that the finance committee had not held any meeting because no record was made of the same. The main discussion had been relating to Mr. Freedman's matter of \$15,000 mortgages, and Mr. Freedman wishes that his case be disposed of.

Mr. Held reported that it was probable that Mr. Freedman might get his mortgages back by application to the court.

Mr. Held desires that his matter about the extra 1,000 mortgages may not be forgotten.

Mr. Freedman asks whether any member would say that he had given these mortgages other than temporary. The chair replied that Mr. Freedman was right. A resolution offered by Mr. Freedman, to enter his matter upon the minutes, was not seconded, and Gen. Sigel wished to get information first of an expert.

On motion of Mr. Schmidt, it was resolved to appoint a committee of three, which shall procure information how the money which has been deposited by the trustees, exceeding the amount of \$3,000 may be legally recovered, and said committee, as soon as possible, to the president.

On page 229, as follows :

*Special Meeting, February 20, 1877.*

Mr. Schmidt reported that he had conferred with several persons acquainted with banking affairs, who stated neither money nor mortgages that had been deposited in the bank could be withdrawn; neither could the surplus be touched for such purpose. Mr. Freedman states that he has in writing informed Mr. Held that he must have his mortgages back, and he once more notifies to-night the board, else he will take proper steps. The letters of Mr. Freedman and Freutel were read, demanding the return of their mortgages.

On motion of Mr. Zuegner, resolved, that the counsel and one

trustee should proceed to Albany in order to confer with the Bank Superintendent and to submit our case. The chair appointed Mr. Sigel as such committee.

On page 230, as follows :

*Special Meeting, February 24, 1877.*

Mr. Sigel reported his interview with the Bank Superintendent Ellis, who denied that he made the assertion as formerly related by Mr. Held, viz.: That he could compel the old trustees to bear their proportion of the deficiency of the railroad bonds. After the committee had reported to the superintendent the present condition of the bank, it was mutually agreed to close the bank on consultation of the trustees and the superintendent. The matter of Messrs. Friedman and Frental was also submitted to the superintendent, who, however, did not express a decided opinion.

Also upon the same page :

A petition to pay eighty-six dollars on account of a deposit of the deceased Susan A. Lyon, in order to defray the funeral expenses, was granted with the condition that if difficulties should arise Mr. Zuegner should pay the money back to the bank. Mr. Schmidt proposed to state in detail the conditions under which the trustees were impelled to pay their respective amounts into the bank some time ago. These conditions were as follows: As President Held had reported that the Bank Superintendent, in the presence of counsel, of the bank (Mr. Hall) had given him the prompt assurance that the old trustees of the bank, who, after the origin of the deficiency, had resigned, could be compelled to make the deficiency good, and that he, even in case of their possessing nothing, could hold responsible every one or all for the whole amount. It was resolved that those trustees that deposited mortgages should not pay any interest, and that those that had paid cash should be entitled to six per cent interest. This motion was unanimously adopted. Mr. Thiel asked why the mortgages of the trustees in violation of the agreement were recorded. Mr. Freedman stated that he did not want his two mortgages, under any circumstances, recorded, and that he would hold Mr. Held responsible for any damages that may arise from it. Mr. Held replied that he was advised to have the mortgages recorded, and that it was his duty to do so, as he had heard that mortgages had been transferred. It was resolved to accept hereafter no more deposits, and to keep the safe deposits, which were received since the adoption of the resolutions in a previous meeting, separate from the other deposits. Adjourned."

We now come to the report of January 1, 1877 :

*“ Report of the German Savings Bank, of the town of Morrisania, an incorporated institution for savings, of its condition on the morning of the 1st day of January, 1877, made to the Superintendent of the Banking Department, as required by chapter 371 of the Laws of 1875.*

#### RESOURCES.

1. Bonds and mortgages, as shown by Schedule A, hereto annexed.....	\$172,750 00.
2. Stock investments, as shown by Schedule B, hereto annexed.....	86,831 55
3. Amount loaned on stocks, as authorized by section 27, chapter 371, Laws of 1875, as shown by Schedule C, hereunto annexed.....	60 00
4. Banking-house and lot at cost.....	46,495 11
6. Other real estate at cost.....	8,900 37
7. Cash on deposit in banks or trust companies, as shown by Schedule D, hereto annexed.....	11,075 80
8. Cash on hand.....	2,596 60
9. Amount of all other assets, the particular items of which are set forth in Schedule E, hereto annexed..	21,619 57
	<hr/>
	\$350,329 00
	<hr/>

#### LIABILITIES.

1. Amount due depositors.....	\$299,237 79
Principal.....	\$290,840 00
Interest credited for the 1st of July,	
1872 .....	8,397 79
2. Other liabilities, viz.: Loans on stock, \$19,000 ; loans on bonds and mortgages, \$20,000.....	39,000 00
3. Excess of assets over liabilities.....	12,091 21
	<hr/>
	\$350,329 00
	<hr/>

#### CASH TRANSACTIONS DURING THE YEAR 1876.

##### *Receipts.*

Cash on hand and in bank or trust companies, Jan.

1, 1876, before transactions of the day.....	\$35,386 05
From depositors, not including interest credited .....	817,354 26
From interest on loans, deposits and investments.....	22,189 97



From all other profits, viz.: Premiums, \$	
rents, \$740.50 ; collections, \$170.91.....	\$911 41
From mortgages paid, called in or foreclosed.....	155,400 00
From redemption of stocks.....	8,000 00
From loans repaid.....	
From other sources, viz.: Loans on stocks and bonds and mortgages.....	84,000 00
	<u>\$1,123,241 69</u>

*Payments.*

To depositors, including interest paid to them.....	\$1,038,602 70
For loans on bonds and mortgages.....	650 10
For loans on stocks and other securities.....	60 00
For stocks and bonds purchased, par value, \$	
cost, including premiums, commission, etc.....	
For real estate purchased.....	4,593 20
For interest (other than interest payments to deposi- tors).....	1,611 89
For expenses, as shown by Schedule F. hereto annexed	5,051 40
Other payments, viz.: Loans on stocks and bonds and mortgages, \$55,000 ; on account of Midland bonds, \$4,000.....	59,000 00
Cash on hand and in bank or trust companies, Dec. 31, 1876, after the transactions of the day.....	13,672 40
	<u>\$1,123,241 69 "</u>

A whole year had elapsed and nothing had been done by Mr. Ellis, and the Bank shows a surplus of assets of \$12,191.19 It seems that Mr. Smith tabulated that report and proved a deficiency, and showed the tabulation to Mr. Ellis ; and the first act in regard to this bank by anybody, seems to have been a resolution offered February 21, 1877, which was to the effect that the deposits of the bank received after that time, should be laid aside and not put into the general fund. The matter ran along until the 24th of February, 1877, Mr. Ellis having done nothing in the meantime, when the trustees requested him to close the bank ; and he did it. Mr. Ellis wrote to the Attorney-General, February 24, 1877, to close the bank. The letter was as follows:

“ HON. CHAS. S. FAIRCHILD, *Attorney-General, etc.* :

SIR—I respectfully call your attention to the condition of the German Savings Bank of the town of Morrisana. The only report of

this institution for Jan. 1st, '77, shows total assets \$350,329, and total liabilities of \$338,237.79, making an apparent surplus of \$12,091.21. Since that date the deposits have been drawn down to about \$250,000, and the officers of the bank have been compelled to require the time for payment provided for in their by-laws. It is evident that public confidence is lost, and the character of the assets that I believe the officers will not be able to meet the demands of the depositors. After a careful examination of the assets, and from a conversation with some of the officers of the institution, I deem it in the interest of the depositors to close up its affairs; I therefore, recommend that you take the legal steps to that end.

Respectfully yours,

D. C. ELLIS,

*Superintendent."*

A receiver was appointed June 15, 1877. The amount due depositors in this bank was \$230,000, value of assets \$177,022.91. There has been no dividend. It was insolvent to the extent of \$70,000.

By Senator SPRAGUE:

Q. Does it appear what date it was when Mr. Smith showed that tabulated report to Mr. Ellis?

Mr. OLMSTEAD—The evidence in regard to that is on page 740 of the Senate testimony.

"Q. After the report of January 1, 1877, did you have any conversation with Mr. Ellis in regard to that? A. Yes, sir,—and he says it was the early part of February—on the 2d of February."

Mr. CHAPMAN—The report was not filed till February.

Mr. OLMSTEAD—Several days before the 24th, any way. It came in on the 2d day of February. He said he could not give the exact day. Do I understand the question of the Senator to be whether Smith showed that tabulated statement to Mr. Ellis?

Senator SPRAGUE—The precise time when that tabulated statement of Smith's was shown to Mr. Ellis, if ever?

Mr. OLMSTEAD—I refer the Senator to the bottom of page 741.

"Q. Can you tell the precise time you took up this report and examined it? A. No, sir.

Q. You cannot tell the precise time it was received the second time in the department? A. I think I could tell within a day or two. A. few days elapsed only before the bank was closed. The witness said he could tell within a few days."

I now call the attention of the Senate to the case of The Loaners' Bank (formerly The Pawnors' Bank). The Senate will remember in

respect to that bank that there were no facts of importance except what are on the brief. No report of this bank was ever made. The Attorney-General gave an opinion that that bank was liable to report. The bank procured an opinion that the bank was not liable to report under the act of 1874, and Mr. Ellis stated that he went to New York and was there two or three days, and he intended to submit it to the Attorney-General. The fact is, as it will appear from a comparison of the Senate testimony on pages 663 and 664, that Mr. Ellis was there about two weeks, with the opinion in his pocket, and never did submit it to the Attorney-General. It seems Mr. Ellis did nothing at all. No dividend has ever been made by a receiver. The assets were \$10,000; the liabilities \$230,000.

I now come to the New York Loan and Trust Company.

This was a bank of deposit. It was allowed to receive deposits, and do almost every thing a bank could do. It had a capital of \$1,000,000; and the only salient point about that case is that Mr. Ellis recognized his obligations to the stockholders and depositors of that bank by ordering an examination February 5 and 6, 1875, which showed a deficiency of assets of \$268,419.14. He did nothing, and it was closed by the trustees themselves voluntarily, January 28, 1876, a year after that examination. The whole capital of that bank was lost, except about fifteen per cent. The examination was made by Reid, Aldrich and Paine on the commission of Mr. Ellis.

Mr. TRACY—The powers of this bank given by this charter of May 6, 1870, are explained largely in the committee's testimony at page 327. A portion of it will also be found on page 326. The capital of the bank was \$1,000,000. It paid all its debts and depositors before the appointment of a receiver, and this has absorbed all, except about ten per cent of its capital.

Mr. OLMSTEAD—I now come to the consideration of the Security Savings Bank.

There need not be much said in regard to this bank. The bank made a report on January 1, 1875, which is as follows:

*“Report of the Security Savings Bank, an incorporated institution for savings, of its condition on the 1st day of January, 1875, made to the Superintendent of the Banking Department, as required by chapter 136 of the Laws of 1857.”*

#### FINANCIAL.

##### *Resources.*

1. Bonds and mortgages, as per Schedule A, hereto annexed.....	\$231,668 00
2. Stock investments, as per Schedule B, hereto annexed.....	60,885 00

3. Amount loaned on public stocks, as per Schedule C, hereto annexed.....	\$41,866 48
4. Amount loaned on stocks or bonds of private corporations, as per Schedule D, hereto annexed,	58,500 00
5. Amount loaned on personal securities, as per Schedule E, hereto annexed.....	7,150 00
6. Real estate, cost \$78,460.43; market value, \$87,400; standing on books at \$87,400, cost.....	78,460 43
7. Cash on deposit in banks or trust companies, as per Schedule F, hereto annexed.....	123,779 58
8. Cash on hand not deposited in bank.....	23,947 82
9. Amount of assets not included under either of the above heads, the particular items of which are set forth in Schedule G, hereto annexed.....	34,373 63
	<hr/>
	\$660,630 94
	<hr/>

## LIABILITIES.

1. Amount due depositors.....	\$649,600 43
Principal.....	\$634,310 02
Interest credited for the 1st of	
January, 1875.....	15,290 41
2. Other liabilities, viz.:.....	
3. Excess of assets over liabilities.....	11,030 51
	<hr/>
	\$660,630 94
	<hr/>

## STATISTICAL.

1. Number of of open accounts on the morning of January 1, 1875.....	3,313
2. Number of accounts opened during the year 1874...	1,099
3. Number of accounts closed during the year 1874...	1,173
4. Number of accounts opened since organization....	9,016
5. Amount deposited, not including interest credited, during 1874 .....	\$595,888 64
6. Amount deposited, including interest credited, for the same period.....	629,375 45
7. Amount withdrawn during the year 1874.....	623,555 59
8. Amount of interest or profits earned* during the year 1874.....	

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\*If amount received is reported, strike out 'or earned'; if amount earned is reported, strike out 'received or.'

9. Amount of interest credited to depositors for the same period.....
  10. Amount of each semi-annual credit of interest, for the year 1874, and when credited; July 1, 1874, \$15,534.68; January 1, 1875, \$15,290.41, Credited at other periods during the year ..... \$2,661 72
  11. Rate per cent of dividends or interest to depositors during the past year, six per cent.
- 

STATE OF NEW YORK, }  
 COUNTY OF NEW YORK. } ss.:

D. D. Marshall, president, and Wm. N. Banks, secretary, of the Security Savings Bank, an incorporated institution for savings, located and doing business at No. 507 Third avenue, in the city of New York, being duly and severally sworn, each for himself saith, that the foregoing report, and the schedules accompanying the same, are, in all respects, a true statement of the condition of the said institution before the transaction of any business on the morning of the 1st day of January, 1874, in respect to each and every of the items and particulars therein specified, according to the best of his knowledge and belief.

D. D. F. MARSHALL, *President.*

WM. M. BANKS, *Secretary.*

Severally subscribed and sworn by }  
 both deponents, the 14th day of }  
 January, 1876, before me.

JOHN H. SCIL,

*Notary Public (315) New York Co."*

That report shows a surplus of assets of \$11,030.51. The bank was examined by Mr. Reid in November, 1875, and his report is as follows:

ASSETS AND LIABILITIES of the Security Savings Bank of New York upon the 27th day of November, 1875, as found upon examination made by the direction and authority of the Superintendent of the Bank Department.

	Rate of interest.	Amount at Par.	MARKET VALUE.		Totals.
			Rate.	Amount.	
Bond and mortgages.....	7	.....	....	.....	\$227,482 27
Call loans.....	7	\$20,000 00	....	.....	22,700 00
Arcadia town bonds.....	7	25,000 00	100	\$20,000 00	
Sodus town bonds.....	7	3,000 00	100	25,000 00	
Caneadea town bonds.....	7	.....	100	3,000 00	
Banking-house.....		.....	....	\$85,000 cost	48,000 00
Real estate, ten acres Mt. Vernon.....		.....	....	.....	79,562 55
Real estate, house and lot in Astoria.....		.....	....	.....	4,654 66
Rent due and accrued.....		.....	....	.....	2,114 02
Cash in safe.....		.....	....	.....	523 00
Cash in Fifth National Bank.....	4	.....	....	4,470 00	
Cash in Murray Hill Bank.....	4	.....	....	13,430 86	
Cash in Bull's Head Bank.....	4	.....	....	4,834 28	
Cash in National Broadway Bank.....		.....	....	921 60	
Interest accrued.....		.....	....	151 30	23,808 04
Deficiency of assets.....		.....	....	.....	7,886 00
		.....	....	.....	890 20
					\$417,620 77

LIABILITIES.

Due depositors.....	.....	.....	.....	\$409,820 77
Interest accrued.....	.....	.....	.....	7,800 00
				417,620 77

ANNUAL INCOME from the investments of the Security Savings Bank, as they were found upon examination made on the 27th day of November, 1875, and the annual charges thereon at current rates or estimated on the basis of 1875.

INVESTMENTS.	Rate of interest.	Amount at par.	Revenue.	Totals.
Bonds and mortgages.....	7	\$227,482 00	\$15,923 74	
Call loans.....	7	22,700 00	1,589 00	
Town Bonds.....	7	48,000 00	3,360 00	
Cash in bank.....	4	19,200 00	768 00	
Rent .....	....	.. .....	2,000 00	\$23,640 74
CHARGES.				
Interest to depositors.....	....	.....	\$19,500 00	
Salaries .....	....	.....	1,500 00	
Internal revenue tax.....	....	.....	450 00	
Other taxes.....	....	.....	750 00	
All other charges.....	....	.....	500 00	
				22,700 00
Excess.....	....	.....	.....	\$940 74



That report showed a deficiency of assets of \$890.29 and a surplus of income of \$940.74. Nothing was ever done by Mr. Ellis in regard to that bank. It was wound up by a suit brought by the depositors. He never made any examination, notwithstanding the deficiency which appeared in November, 1875. Some money was stolen there by the teller, but it was not sufficient to account for the deficiency. It was not discovered, in fact, until after the bank closed. The report by the bank of January 1, 1876, showed a deficiency of assets of \$27,175.96. Nothing was done to make up the deficiency. There was no report to the Attorney-General. The receiver was appointed on motion of depositors February first. Number of depositors, 2,600; liabilities, \$389,000; dividend by receiver, fifty-seven and one-half per cent; expects to pay two and a half per cent more. The teller of this bank stole some \$63,000.

The last case is in reference to the Mutual Benefit Savings Bank. There was a report of the bank by Reid and Aldrich, examiners, December 16, 1873.

## MUTUAL BENEFIT — DECEMBER SIXTH AND SUBSEQUENT DAYS.

	Rate of Interest.	Amount at par.	MARKET VALUE.		Totals.
			Rate.	Amount.	
Bonds and mortgages.....	....	.....	....	.....	\$206,088 80
Call loans on U. S. 5-20, railroad and town bonds.....	....	.....	....	.....	44,718 47
New York county bonds.....	....	\$70,000 00	100	\$70,000 00	
Westchester county bonds.....	....	27,900 00	100	27,900 00	
Arcadia county bonds.....	....	5,300 00	95	5,035 00	
Sodus county bonds.....	....	2,100 00	95	1,995 00	
Saratoga county bonds.....	....	400 00	100	400 00	
Real estate, under building clause in charter, contracted for.....	....	.....	....	.....	11,746 95
Real estate in New York, bid in on foreclosure.....	....	.....	....	.....	7,964 92
Real estate in Brooklyn, bid in on foreclosure.....	....	.....	....	.....	8,024 97
Safe and furniture.....	....	.....	....	.....	4,000 00
Cash in safe.....	....	.....	....	8,284 60	
Cash in Merchants' Exchange National Bank.....	....	.....	....	6,727 98	
Interest accrued.....	....	.....	....	.....	15,012 58
Due depositors (2,661 depositors).....	....	.....	....	\$416,733 37	10,791 00
Interest accrued.....	....	.....	....	8,400 00	425,133 37
Deficiency.....	....	.....	....	.....	\$11,455 68

## INCOME.

Bonds and mortgages.....	.....	206,089 00	7	\$14,426 23
Call loans.....	.....	44,718 00	7	3,130 26
County and town bonds.....	.....	105,700 00	7	7,399 00
Building contracts.....	.....	11,747 00	7	822 29
Rent of foreclosed property.....	.....	.....	...	600 00
Cash in bank.....	.....	5,728 00	4	269 12
				26,646 90

## CHARGES.

Interest to depositors.....	.....	.....	..	\$18,300 00
Salaries.....	.....	.....	..	5,140 00
Rent.....	.....	.....	..	3,000 00
Internal revenue tax.....	.....	.....	..	100 00
All other charges.....	.....	.....	..	3,000 00
				29,540 00
				\$2,893 10

Deficiency of income.....

.....

Senators will notice that shows a deficiency of assets of \$11,455.68 deficiency of income, \$2,893.10.

The following letter accompanied the same:

“Hon. D. C. ELLIS, *Superintendent Bank Department* :

SIR.—The undersigned, appointed to examine into the condition, working, etc., of the Mutual Benefit Savings Bank of New York, report :

The accompanying schedules show the general working of the bank.

There is considerable improvement in the character of the bonds and mortgages and call loans since the last examination, but the deficiency has resulted in a deficiency of about \$11,000.

The special deposits have been reduced from \$207,000 to about \$41,000.

The property bid in at foreclosure is supposed to be worth the full amount it stands at on the books.

Respectfully submitted,

GEO. W. REID,  
W. F. ALDRICH.

Examined December sixteenth and subsequent days.”

It appears by that letter that the special deposits had been reduced from \$207,000 to about \$41,000. There was no examination of that bank from that time until the regular two years examination came around in November 15, 1875.

Intermediate, however, to those examinations, there were three reports by the bank.

The first report was a report made to balance by the trustees' obligations. It was stated in the report as balanced by trustees' obligations to make up the deficiency of assets of \$5,978.11. The Senate will see how that is done by reference to the Senate testimony, page 846.

“*Report of the Mutual Benefit Savings Bank, an incorporated institution for savings, of its condition on the 1st day of January, 1874, made to the Superintendent of the Banking Department, as required by chapter 136 of the Laws of 1857.*

#### FINANCIAL.

##### *Resources.*

1. Bonds and mortgages, as per Schedule A, hereto annexed .....	\$194,595 48
2. Stock investments, as per Schedule B, hereto annexed .....	105,963 72

3. Amount loaned on public stocks, as per Schedule C, hereto annexed.....	\$3,500 00
4. Amount loaned on stocks or bonds of private corporations, as per Schedule D, hereto annexed....	48,318 47
5. Amount loaned on personal securities, as per Schedule E, hereto annexed.....	
6. Real estate, cost \$27,253.56 ; market value \$ ; standing on books at \$ .....	27,253 56
7. Cash on deposit in banks or trust companies, as per Schedule F, hereto annexed .....	3,871 11
8. Cash on hand not deposited in bank.....	22,884 88
9. Amount of assets not included under either of the above heads, the particular items of which are set forth in Schedule G, hereto annexed.....	21,924 02
	<hr/>
	\$428,311 24
	<hr/>

*Liabilities.*

1. Amount due depositors.....	\$428,311 24
Principal.....	\$417,143 18
Interest credited for the 1st of Jan., 1874.....	11,168 06
2. Other liabilities, viz:.....	
3. Excess of assets over liabilities....	
	<hr/>
	\$428,311 24
	<hr/>

## STATISTICAL.

1. Number of open accounts on the morning of January 1, 1874.....	2,655
2. Number of accounts opened during the year 1873.....	764
3. Number of accounts closed during the year 1873...	995
4. Number of accounts opened since organization...	7,976
5. Amount deposited, not including interest credited during 1873.....	\$2,152,976 92
6. Amount deposited, including interest credited, for the same period.....	2,175,895 39
7. Amount drawn during the year 1873.....	2,324,393 33
8. Amount of interest or profits received * during the year 1873.....	33,284 02

\*If the amount received is reported, strike out 'or earned;' if amount earned is reported, strike out 'received or.'

9. Amount of interest credited to depositors for the same period.....	\$22,927 47
10. Amount of each semi-annual credit of interest for the year 1873, and when credited: July 1, \$11,665 86; January 1, \$11,168.06.....	
Credited at other periods during the year.....	93 55
11. Rate per cent of dividends or interest to depositors during the past year, four and six per cent.	

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STATE OF NEW YORK, }  
COUNTY OF NEW YORK. } ss.:

Charles K. Graham, president, and George H. Benedict secretary of the Mutual Benefit Savings Bank, an incorporated institution for savings, located and doing business at No. 166 Nassau street, in the city of New York, being duly and severally sworn, each for himself, saith the forgoing report and the schedules accompanying the same are, in all respects, a true statement of the condition of said institution before the transaction of any business on the morning of the first day of January, one thousand eight hundred and seventy-four, in respect to each and every of the items and particulars therein specified, according to the best of his knowledge and belief.

CHARLES K. GRAHAM,

*President.*

G. H. BENEDICT,

*Secretary.*

Severally subscribed and sworn by }  
both deponents, the 23d day of }  
January, 1874, before me.

WM. W. BURNHAM,

*Notary Public.*

## SCHEDULE G.

*Difference between market value and costs of the following investments:*

	Excess of cost over market value.	Excess of market value over cost.
United States stocks.....	.....	.....
New York State stocks.....	.....	.....
Stocks of other States.....	.....	.....
Bonds of counties, cities and towns of this State.....	.....	\$3,236 28
Other stocks and bonds.....	.....	.....
Real estate.....	.....	.....
Totals.....	.....	.....
Difference.....	*\$	\$3,236 28

*Loans, deposits, investments or assets of every description, not heretofore enumerated, viz. : †*

Accrued interest on bond and mortgage loans to December 31, 1873.....	\$4,036 01
Accrued interest on call loans to December 31, 1873..	3,120 12
Accrued interest on New York city and county bonds to December 31, 1873.....	830 28
Accrued interest on Westchester town bonds to December 31, 1873.....	330 92
Accrued interest on Arcadia and Sodus bonds to December 31, 1871.....	175 54
Accrued interest on Saratoga town bonds to December 31, 1873.....	25 67
Accrued interest on deposits in Merchants' Exchange Bank to December 31, 1873.....	191, 09
Safe, bank fixtures, furniture, lease, etc.....	4,000 00
Trustees' obligations to make up deficiency of.....	5,978 11
	<u>\$21,924 02''</u>

\*If cost exceeds market value the difference should be entered under the head, Other Liabilities,' in the report.

†As interest credited to depositors is stated among the liabilities, it will of course, be just to include in this schedule the interest due, though unpaid, on investments.

The Senate will observe the last entry on that page: "Trustees' obligations to make up deficiency of \$5,978.11," making the total \$21,924.02, which appears as the amount of the resources. In other words, the amount was put in the account to just balance the account. That is all there is of that, and the entry was precisely the same as in the report of July 1, 1874, except they had got a little more in debt, and they had to make it up by trustees' obligations—\$7,519.58.

I call your attention to Schedule G, which is as follows:

### SCHEDULE G.

*Difference between market value and cost of the following investments:*

	Excess of cost over market value.	Excess of market value over cost.
United States stocks.....	.....	.....
New York State stocks.....	.....	.....
Stocks of other States.....	.....	.....
Bonds of counties, cities and towns of this State.....	.....	\$5,124 00
Other stocks and bonds.....	.....	.....
Real estate.....	.....	.....
Totals.....	.....	.....
Difference.....	*\$	\$5,124 00

*Loans, deposits, investments or assets of every description, not heretofore enumerated, viz. : †*

Accrued interest on bond and on mortgage loans to June 30, 1874.....	\$5,373 27
Accrued interest on call loans to June 30, 1874.....	4,278 73
Accrued interest on New York city bonds to June 30, 1874.....	1,008 19
Accrued interest on Westchester bonds to June 30, 1874.....	319 06
Accrued interest on Arcadia and Sodus bonds to June 30, 1874.....	172 67
Accrued interest on Saratoga bonds to June 30, 1874,	11 67

\*If cost exceeds market value the difference should be entered under the head, 'Other Liabilities,' in the report.

†As interest credited to depositors is stated among the liabilities, it will, of course, be just to include in this schedule the interest due, though unpaid, on investments.



Accrued interest on Merchants' Exchange Bank, to June 30, 1874.....	\$422 13
Bank safes, fixtures and furniture, etc.....	4,000 00
Trustees' obligations to make up deficiency.....	7,519 58
	<hr/>
	\$28,229 30
	<hr/>

Mr. OLMSTEAD—I now produce the report of the bank made to the department January 1, 1875. It reads as follows :

*Report of the Mutual Benefit Savings Bank, an incorporated institution for savings, of its condition on the 1st day of January, 1875, made to the Superintendent of the Banking Department as required by chapter 136 of the Laws of 1857.*

#### FINANCIAL.

##### *Resources.*

1. Bond and mortgages, as per Schedule A, hereto annexed.....	\$165,138 56
2. Stock investments, as per Schedule B, hereto annexed.....	120,526 00
3. Amount loaned on public stocks, as per Schedule C, hereto annexed.....	3,710 00
4. Amount loaned on stocks or bonds of private corpora- tions, as per Schedule D, hereto annexed.....	7,298 47
5. Amount loaned on personal securities, as per Schedule E, hereto annexed.....	
6. Real estate, cost.....	28,374 34
7. Cash on deposit in banks or trust companies, as per Schedule F, hereto annexed.....	54,582 89
8. Cash on hand not deposited in bank.....	20,774 21
9. Amount of assets not included under either of the above heads, the particular items of which are set forth in Schedule G, hereto annexed.....	35,316 18
	<hr/>
	\$436,350 65
	<hr/>

##### *Liabilities.*

1. Amount due depositors.....	\$436,350 65
Principal.....	\$425,155 70
Interest credited for the 1st of Jan- uary, 1875.....	11,194 95
2. Other liabilities, viz.....	
3. Excess of assets over liabilities.....	
	<hr/>
	\$436,350 65
	<hr/>

## STATISTICAL.

1. Number of open accounts on the morning of January 1, 1875.....	2,629
2. Number of accounts opened during the year 1874..	752
3. Number of accounts closed during the year 1874..	778
4. Number of accounts opened since organization..	8,728
5. Amount deposited, not including interest credited, during 1874.....	\$1,756,117 24
6. Amount deposited, including interest credited, for the same period.....	1,777,156 12
7. Amount withdrawn during the year 1874.....	1,769,116 71
8. Amount of interest or profits received or earned * during the year 1874.....	21,187 99
9. Amount of interest credited to depositors for the same period.....	21,038 88
10. Amount of each semi-annual credit of interest, for the year 1874, and when credited: July 1, 1874, \$9,813.52; January 1, 1875, \$11,194.95.....	
Credited at other periods during the year.....	30 41
11. Rate per cent of dividends or interest to depositors during the past year, four per cent and six per cent."	

I also call the attention to the following report by the bank July 1, 1875, and the letter accompanying the same.

*"Report of the Mutual Benefit Savings Bank, an incorporated institution for savings, of its condition on the 1st day of January, 1875, made to the Superintendent of the Banking Department, as required by chapter 136 of the Laws of 1857.*

## FINANCIAL.

*Resources.*

1. Bonds and mortgages, as per Schedule A, hereto annexed .....	\$165,138 56
2. Stock investments, as per Schedule B, hereto annexed.....	120,526 00
3. Amount loaned on public stocks, as per Schedule C, hereto annexed.....	3,710 00

\* If amount received is reported, strike out 'or earned:' if amount earned is reported, strike out 'received or.'

4. Amount loaned on stocks or bonds of private corporations, as per Schedule D, hereto annexed..	\$7,298 47
5. Amount loaned on personal securities, as per Schedule E, hereto annexed.....	
6. Real estate, cost.....	28,374 34
7. Cash on deposit in banks or trust companies, as per Schedule F, hereto annexed.....	54,582 89
8. Cash on hand not deposited in bank.....	20,774 21
9. Amount of assets not included under either of the above heads, the particular items of which are set forth in Schedule G, hereto annexed.....	35,316 18
	<hr/>
	\$436,350 65
	<hr/>

\*  
*Liabilities.*

1. Amount due depositors.....	\$436,350 65
Principal.....	\$425,155 70
Interest credited for the 1st of January, 1875.....	11,194 95
2. Other liabilities, viz.:....	
3. Excess of assets over liabilities.....	
	<hr/>
	\$436,350 65
	<hr/>

STATISTICAL.

1. Number of open accounts on the morning of January 1, 1875.....	\$2,629 00
2. Number of accounts opened during the year 1874,	752 00
3. Number of accounts closed during the year 1874,	778 00
4. Number of accounts opened since organization...	8,728 00
5. Amount deposited, not including interest credited during 1874.....	1,756,117 24
6. Amount deposited, including interest credited, for the same period.....	1,777,156 12
7. Amount withdrawn during the year 1874.....	1,769,116 71
8. Amount of interest or profits received or earned* during the year 1874.....	21,187 99
9. Amount of interest credited to depositors for the same period.....	21,038 88

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\* If amount received is reported, strike out 'or earned'; if amount earned is reported, strike out 'received or.'

10. Amount of each semi-annual credit of interest,  
for the year 1874, and when credited: July 1,  
1874, \$9,813.52; January 1, 1875, \$11,194.95.  
Credited at other periods during the year..... \$30 41
11. Rate per cent of dividends or interest to depositors  
during the past year, four per cent and six per  
cent. =====

STATE OF NEW YORK, }  
COUNTY OF NEW YORK. } ss. :

Charles K. Graham, president, and G. H. Benedict, secretary, of the Mutual Benefit Savings Bank, an incorporated institution for savings, located and doing business at No. 166 Nassau street, in the city of New York, being duly and severally sworn, each for himself, saith that the foregoing report and the schedules accompanying the same are, in all respects, a true statement of the condition of said institution before the transaction of any business on the morning of the first day of January, 1875, in respect to each and every of the items and particulars therein specified, according to the best of his knowledge and belief.

CHARLES K. GRAHAM,  
*President.*  
G. H. BENEDICT,  
*Secretary.*

Severally subscribed and sworn by both }  
deponents, the 27th day of January, }  
1875, before me.

A. H. BRADLEY,  
*Notary Public, City and Co. of New York.*

#### SCHEDULE G.

*Difference between market value and cost of the following investments:*

	Excess of cost over market value.	Excess of market value over cost.
United States stocks.....	.....	.....
New York State stocks.....	.....	.....
Stocks of other States.....	.....	.....
Bonds of counties, cities and towns of this State.....	.....	\$7,249 00
Other stocks and bonds.....	.....	.....
Real estate.....	.....	.....
Totals.....	.....	.....
Difference.....	*\$.....	\$7,249 00

\* If cost exceeds market value the difference should be entered under the head 'Other Liabilities,' in the report.

*Loans, deposits, investments, or assets of every description not heretofore enumerated, viz. : \**

Accrued interest on bond and mortgage loans to December 31, 1874.....	\$7,874 21
Accrued interest on call loans to December 31, 1874..	5,230 93
Accrued interest on New York city bonds to December 31, 1874 .....	1,008 19
Accrued interest on Westchester bonds to December 31, 1874.....	319 06
Accrued interest on Arcadia and Sodus bonds to December 31, 1874.....	175 54
Accrued interest on Saratoga bonds to December 31, 1874.....	25 67
Accrued interest on Merchants' Exchange Bank balances to December 31, 1874.....	281 37
Bank safes, fixtures, furniture, etc.....	4,000 00
Trustees' obligations to make up deficiency of.....	9,152 21
	<hr/>
	\$35,316 18
	<hr/>

Mr. OLMSTEAD — I produce the report of the examiners' of November 15, 1875. The letter accompanies the report to Mr. Ellis. It is filed December 2, 1875, and reads as follows:

"BANK DEPARTMENT,  
STATE OF NEW YORK. }

Pursuant to the provisions of chapter 371 of the Laws of 1875, I do hereby appoint George W. Reid to examine into the condition, working and affairs generally of the Mutual Benefit Savings Bank, New York city, and report thereon to me in detail, as soon as practicable.

Given under my hand and official seal at Albany, this 25th day of October, 1875.

D. C. ELLIS,  
*Superintendent."*

I also call the attention of the Senate to the regular examination made by Mr. Reid, November 15, 1875.

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\* As interest credited to depositors is stated among the liabilities, it will of course, be just to include in this schedule the interest due, though unpaid, on investments.

ASSETS AND LIABILITIES of the *Mutual Benefit Savings Bank of New York*, upon the 15th day of November, 1875, as found upon examination made by the direction and authority of the Superintendent of the Bank Department.

	Rate of Interest.	Amount at par.	MARKET VALUE.		Totals.
			Rate.	Amount.	
Bonds and mortgages.....	7	.....	.....	.....	\$132,792 77
Call loans.....	7	.....	.....	.....	29,925 47
Texas State bonds.....	10	\$20,000 00	100	\$20,000 00	
New York city bonds.....		85,000 00	110	93,500 00	
Long Island City bonds.....	7	43,000 00	100	43,000 00	
Westchester county bonds.....	7	24,400 00	105	25,620 00	
Richmond county bonds.....	7	7,000 00	100	7,000 00	
Arcadia town bonds.....	7	5,300 00	100	5,300 00	
Sodus town bonds.....	7	2,100 00	100	2,100 00	
Saratoga Springs village bonds.....	7	300 00	100	300 00	
Safes and fixtures.....	.....	.....	.....	.....	196,820 00
Real estate, Bloomingdale.....	.....	.....	.....	\$8,103 12	2,500 00
Real estate, Brooklyn.....	.....	.....	.....	8,883 04	
Real estate, Jamaica.....	.....	.....	.....	4,314 12	
Real estate, Mott Haven.....	.....	.....	.....	4,312 72	
Real estate, two houses, East 58th street, N. Y.....	.....	.....	.....	26,955 07	
Cash in safe.....	.....	.....	.....	.....	52,568 07
Interest accrued.....	.....	.....	.....	.....	3,799 38
					14,220 00
					\$432,625 69

## LIABILITIES.

Due depositors.....	.....	.....	.....	\$446,709 61	
Interest accrued.....	.....	.....	.....	8,700 00	
					455,409 61
Deficiency of assets.....	.....	.....	.....	.....	\$22,783 92

ANNUAL INCOME from the investments of the Mutual Benefit Savings Bank as they were found upon examination made on the 15th day of November, 1875, and the annual charges thereon at current rates or estimated on the basis of 1875.

INVESTMENTS.	Rate of Interest.	Amount at par.	Revenue.	Totals.
Bonds and Mortgages....	7	\$132,792 00	\$9,295 44	
Call loans, in part.....	7	19,925 00	1,394 75	
Texas State bonds.....	10	20,000 00	2,000 00	
City and other bonds.....	7	167,100 00	11,697 00	\$24,387 19
CHARGES.				
Interest to depositors.....	....	.....	\$23,000 00	
Salaries .....	....	.....	2,456 00	
Rent.....	....	.....	3,200 00	
Internal revenue tax.....	....	.....	400 00	
All other charges.....	....	.....	1,725 00	30,781 00
Deficiency of income.....	....	.....	.....	\$6,393 81



Also to the following letter, accompanying the examination :

“Hon. D. C. ELLIS, *Superintendent Banking Department* :

DEAR SIR. — The undersigned, appointed to examine into the condition, working, etc., of the Mutual Benefit Savings Bank of New York, reports :

The call loans include notes for \$10,000 (on interest), with collaterals put in a year or two ago by the trustees towards the deficiency. The interest on those notes has not been paid, and the collaterals are short in value, probably \$3,000, in addition to the present deficiency of \$22,783.

The amount of real estate bid in is large, and could not now be sold without a loss of probably \$20 000.

Respectfully submitted,

GEO. W. REID.

Examined November 15, 1875, and subsequent days.”

The letter says there is still a larger deficiency than stated in the report. An action was brought by a depositor, and the bank was closed on his motion, and Mr. Ellis, so far as we have any information, made no sign and did nothing whatever. There was due depositor when that bank closed, \$445,000, the number of depositors, 2,800s. There was a dividend made by the receiver of fifty per cent. Assets received, nominal value, \$420,000.

The Senate hereupon adjourned until to-morrow, August 15, 1877, at ten A. M.



# ARGUMENTS.

SARATOGA SPRINGS, *August 15, 1877* — 10 A. M.

## ARGUMENT OF HON. O. W. CHAPMAN ON BEHALF OF THE RESPONDENT

MR. CHAPMAN arose and addressed the Senate as follows :

MR. President and Senators, I confess, at the outset, to some little embarrassment, owing to my state of health and the condition of my throat, which may, perhaps, prevent my going on to completion with such remarks as I desire to make. I am also somewhat embarrassed by the suggestion which was thrown out yesterday, in the nature of a sneer, by my learned antagonist, that the respondent in this case was a "mere country fellow," brought down to take charge of the Banking Department of the State. Several of us, Senators, must plead guilty to a similar charge, if that be made as a charge.

I am also embarrassed by the very anomalous character of, and the circumstances connected with, this prosecution. To us, who are representing the respondent, it has seemed, from the start, as being one of the most extraordinary prosecutions that ever has been witnessed under the administration of a civilized government. Here have been two Governors, of one political faith, invoked to remove an official of an opposite political faith; here are two separate messages to the Senate, asking for the removal of that official; here have been employed two sets of counsel to prosecute him; here have been had two separate trials, in order to secure his removal; and I think every one around this circle, every lawyer, at least, will agree with me, that it is the first instance in the history of this government where a man has been put on trial twice for the same offense. It is a violation of the spirit, at least, of the Constitution under which we live. At first — misled by the action of the Judiciary Committee of this body, unintentionally, I assume — the respondent elected to be tried on these charges before a committee of this Senate. All the precedents gave him the right to that election; it was granted him; he went before the committee, and on each of these charges, after hearing the testimony for the prosecution, he went into his defense. He opened his whole line of defense, and then, after the testimony on each charge had been declared closed on the part of the State, although 500 pages of testimony had been taken, the prosecution comes here to the Senate, asks a rehearing, and the Senate opens all the cases, adds new ones, and proceeds to put the respondent again upon trial.

Now, I do not allude to this, Senators, with the idea of complaining of the action of this Senate. I am bringing it up for the purpose of illustrating the extraordinary character of this prosecution; and I submit to you, whether it does not approach much more nearly to *persecution* than *prosecution*. I know very well that Senators sitting here may feel themselves, to a certain extent, bound to yield to what they may seem to be the calls of public opinion; and yet I submit whether the calls of public opinion should not be ignored, and whether you should not sit here as judges, and as such, coolly and impartially decide the questions which are submitted to you under the evidence.

Another thing strikes me as being a little extraordinary in connection with this prosecution.

Although the first charges are made against this respondent to his Excellency, Governor Tilden, they are permitted to slumber for three months in the executive chamber before the present incumbent comes into office. Indeed, they are permitted to slumber after the present executive has taken his seat, for another three months; and not until the name of an appointee has been sent in to this body and been rejected are these charges drawn out, formulated, and presented for trial. I speak of this, Senators, again, not by way of complaint. I allude to it simply as being one of those singular circumstances that have characterized this prosecution from the time it first started; and now, what has been found all the way along down through these nine months of investigation and 2,000 pages of testimony?

The respondent has been charged with permitting an addition to the value of a bank building of \$100,000 during his administration. On investigation before this body and the representative of this body, its committee, we find that there has been no addition whatever, during his administration, but that an addition was made back in 1868, under the incumbency of Mr. Schuyler, another Bank Superintendent which was permitted to remain during the remainder of his term, and also, down through the administration of his successor, Mr. Howell; no addition was made whatever during the time of Mr. Ellis' administration. This charge has therefore fallen to the ground.

The charge has also been made and circulated broadcast through the land, that this superintendent, from the time he went into office, closed up but one bank by his own action. On investigation, it turns out and appears in the testimony not simply of the respondent but of the Attorney-General of the State—that every single savings bank which has been closed, with perhaps one or two exceptions, has been closed on the application of this superintendent to the Attorney-General.

It has been hinted at by the line of evidence—and one would believe that Senators had the idea from expressions made around this circle at the commencement of this investigation — that a mere deficiency of assets, no matter how small, found on the examination of a bank, was sufficient to have set the superintendent in motion and caused him to close it up. I think it will be conceded now, by nearly, if not quite every Senator, around this circle, that that is not a case which will in every instance compel him to move the Attorney-General to close it. I will allude to this again further on.

It has been claimed, too, that “trustees’ bonds” were taken by the superintendent, and that he ought not to have passed them. On investigation, it has been found that those bonds were taken by his predecessors, have been recognized by his predecessors, have been reported to the legislature, and the legislature has not rebuked the right to hold them.

There have also been advanced during the investigation certain propositions of law under the statutes of 1871 and 1875 in regard to the duty of the superintendent to issue certain “orders.” Right here let me say, I think it will be conceded on reflection that, when the superintendent actually proceeds under another provision of that act, a provision which gives him power to *close up* the bank, he need not proceed under the first one, and “order” them to stop certain practices. But it turned out upon investigation here that in not one single case, so far as ascertained at least, except perhaps, the case of the Third Avenue Savings Bank, to which I will come shortly, has there been any violation of the provision of law which would require the superintendent to issue the order that is therein alluded to.

Thus we find, Senators, that during this investigation, one thing after another has been abandoned by the prosecution ; one ground after another has been given up by it ; and that, from the time of the commencement of this case to the present time, it has been making one steady series of retreats. There has been a constant running fire from retreating cruisers only.

And now, what is the charge under which this investigation has been proceeding. It is a charge simply of neglect of duty, culpable neglect of duty, if you please ; and here I may say that the Superintendent of the Banking Department is entitled to our congratulations ; he is entitled to your congratulations, Senators, he is entitled to the congratulations—whether he gets them or not—of the attorneys on behalf of the State ; that during these four years of his administration which have been raked over for nearly six months with the utmost particularity, there has been no particle of evidence brought against him, except as to the charge of neglect of duty. There is not a smell of corruption found upon his garments ; there is not a charge

of favoritism against him towards any of the officials of any of these banks, not one single suspicion to impeach his integrity; and we come down to this trial and the conclusion of it, under a charge simply and solely of neglect of duty. And what, Senators, is that? Neglect of duty! Who of us is free from it? Who, in all this wild world for one single twenty-four hours is free from the charge for which this respondent is placed upon trial? When you find that man who is free from that charge for a single day, you will find the "Perfect Man," and the history of the world has given us but just one such. Neglect of duty! Let me bring that charge home to you, Senators—not offensively, but for the purpose of illustration, What single one of these thirty-two Senators sitting around this circle can rise from his seat, place his hand upon his breast, and say "I am free from the charge of neglect of duty."

But some Senator may say "*culpable* neglect of duty, I am not guilty of." What is neglect of duty, if it is not culpable? If there be a sufficient excuse for the non-performance of the duty, then performance is not a duty. Any neglect of duty is culpable under one signification of the word "*culpable*." But does the Governor of the State mean that, when he injects that word "*culpable*" into his message? No, Senators, he must mean by its use a neglect of duty so gross as to rise to the dignity of a crime.

And, I submit that it is not sufficient to find that the Superintendent of the Banking Department has violated a law unknowingly. It is not sufficient even to find that he has violated a law knowingly. The prosecution must go beyond that; and I wish to call attention of the Senators, for a moment or two, to the case of Judge Prindle, which was tried before a Senate, some members of which, are now here. There was a charge of neglect of duty on the part of Judge Prindle. Every Senator, upon that charge—mindful of the difficulty of proving it, mindful of the fact that everybody is chargeable with it—voted "not guilty."

Now, let me say right here, that I do not think for one moment, nor do I advance the idea, that an official may not be guilty of such neglect of duty as would authorize his removal. Suppose you had such official on trial for constantly and habitually absentsing himself from his department. There would be a clear case of neglect of duty, which would authorize removal, just as in a case of mental imbecility occurring after appointment. Such are cases which would authorize removal. So, too, an official may be guilty of neglect of the duties of his office to such a degree, aside from the points I have mentioned, as would authorize his removal. But, in this case, we find the superintendent always at the post, with the exception of two or three, or four

weeks each year, in which he takes his summer vacation ; and no Senator around this circle will convict him of any neglect of duty for that.

But, to the case of Judge Prindle, and on the point of its not being sufficient cause for removal, that there has been a violation of law, or even a known violation of law, I wish to call your attention to remarks made by certain Senators at the conclusion of that trial.

When Senator Lewis' name was called, he arose and said : " Mr. President, I ask to be excused from voting, I do not wish it to be understood by the vote that I am to cast in this case, that I think Judge Prindle is entirely free from guilt, for the reasons that have been given by myself upon the various votes, which I do not propose now to repeat ; I think Judge Prindle has fallen into some errors, but, they fall far short of being of a sufficiently grave character to induce me to vote for his removal ; hence, I vote no."

When Senator Palmer's name was called, he rose and said : " Mr. President, I asked to be excused from voting and will state that substantially I agree with the views expressed by the Senator from the Thirty-first, and I shall be prepared to vote for motion of censure ; while I cannot see there is enough in these charges proved to remove Judge Prindle, still, I shall be prepared to vote for a resolution of censure, or something of that sort which we may pass after this vote is taken."

Senator Woodin said : " Mr. President, I ask to be excused from voting ; I have voted upon three of the charges, I think, that were preferred against Judge Prindle, sustaining the charge ; I have to say now what I said in executive session, publicly, that I do not approve of several of the acts which were charged and proved against Judge Prindle ; they were violations of the statute, and in one particular instance known violations of the statute ; and in one particular instance known violation of the statute ; although, I think, not coupled with any intent on his part to do a wrong to any interest of any individual or to the public. I refer particularly to the charge against him for neglecting knowingly to make a return to the board of supervisors of an itemized account of the fees received by him during certain years, while he held the office of surrogate and county judge."

If Senators, a surrogate and judge can be permitted to violate a statute knowingly, and still not be subject to removal, should we not be cautious as we approach the question of the removal of any other public officer ? Should we not be especially careful to see whether the violation of the statute or the neglect of duty has been so gross, so grave, so nearly criminal, as, in that respect rather than in any other, to authorize his removal ? The Senator proceeds to say : " For a mere

failure on his part to render an itemized account to the board of supervisors, I might not have been willing to have voted to sustain the charge, but his failure to do it knowingly and in violation of the statute compelled me to vote "proven" on that charge against him; therefore I thus voted."

Now, it is proper I go on and read the next sentence or two. I have no desire to misrepresent or mistake the position of the distinguished Senator in the slightest degree.

"But the manner in which that subject of his account was treated between him and the board of supervisors, seems to me to take from it that intent which would characterize it as a corrupt act in a moral sense — in a strictly moral sense; I say it takes from it that character. I do not believe that he was guilty of a corrupt act, nor that he did it with the design of defrauding his county, or of defrauding any individual; nevertheless it is a violation of the statute, and one that cannot be winked at by those whose duty it is to examine into and decide questions of that character; therefore I make this public expression of my disapproval of his conduct in that case. I don't think it justifies the extreme penalty which this Senate is empowered to inflict upon him — to remove him from his office — together with the additional consequences to himself personally. I could not vote for his removal for the technical violation of that law."

The object I have in quoting these opinions of distinguished Senators is this, not for the purpose of, in any way, limiting or binding, or wishing to limit or bind the action of any Senator around this circle. I simply bring up these opinions in corroboration of what I claim, that it is not for every indiscretion, it is not for every mere violation of law, it is not even for every known violation of law that the Senate should exercise this highest power given to the highest department of the State government to remove a co-ordinate officer.

Now, this charge "culpable neglect of duty," I wish to call Senators attention to it once more. Every one of us here is constantly, daily, hourly, guilty of it. There is no trustee in any savings bank, whether he be inside of this circle or outside of it, who by absenting himself from the meetings of its board of trustees, is not guilty of it. I have no person in mind; I speak of it in a general way, and as a general proposition. There is no single trustee or manager of any savings bank who has not during a year of official action been guilty of culpable neglect of duty in a thousand ways. There is no Senator who has occupied a seat in this circle (prior to the time occupied by each of these Senators, at least), who, if his official action has been looked over for four years of his term, would not find that he himself could be charged, and convicted too, under the rules which have obtained in this case, of culpable neglect of duty. Why, how often during the



three months of a session have you voted for bills for which vote afterwards you could be called to account? If you were put upon trial for neglect of duty, and you were asked whether you read the report of the Bank Department, which was placed upon your files, would you be able to say that you had? How often would you be able to say that you had read the messages of either of the other State departments?

But you will say to me "why, it is impossible for us to read all these." Impossible! Is it impossible for the members of the Legislature to read the reports of four or five different departments, the leading departments of the State government, which are printed and placed upon their files for the very purpose of being read? Suppose you had been brought up on the charge of neglect, and asked if you had read all these reports that were made by the Bank Superintendent prior to the present incumbent's time, how many of you would be able to say you had? In these reports the superintendent had said to you, as members of the Legislature, or to those that preceded you. "Gentlemen, I ask of you, in the interest of these poor "widows and orphans," (about whom so much has been said here), that you will reduce the interest which is permitted by law to be paid to depositors one per cent. Instead of paying six per cent interest, which will lead to bankruptcy, I ask that you amend the law so as to reduce this interest to five. How many members of this Senate have paid attention to that request from the Bank Department, and initiated some proceeding for the reduction of that interest, and that, too, although the Governors of your State have, in their messages, asked at your hands that you do that again and again? Not until 1875 — not until the amended Constitution of your State compelled the Legislature to pass this savings bank act did you take up and follow out the recommendations of the department. If, Senators, years ago, the members of the Legislature who had preceded you, had adopted this provision, there would not have been these disastrous bank failures. One per cent saved to depositors and not paid out over the counter in dividends, would have been sufficient to have carried nearly, if not quite every one of these savings banks out from the shoals into the broad sea of prosperity. And still, Senators, you were asked by the Bank Superintendent, or your predecessors were asked, to do this, but the "duty" was "neglected." Was it "culpable?" This is not all. Your attention was called to some of the very charges that you are trying here. You say that the superintendent ought not to have taken these trustees' bonds, and yet in the very documents which were submitted to the Legislature in 1872 and 1873, these very trustees' bonds, I believe every single one of them that you have found upon this investigation, were reported to the Legislature as having been taken

by the Banking Department, and not one word came from the Legislature of this State disapproving of that action. This is not all. It has been claimed around this circle that wherever there is a deficiency of assets in a bank, thereupon forthwith that bank should be closed up. Senators, in 1872 and 1873, Mr. Howell called the attention of the Legislature to the fact that, in the case of the very Third Avenue Savings Bank, there was a deficiency of some \$115,000 ; but he told you he did not see fit to close it up. On the other hand, he took the position that it was in the interest of the depositors to help the bank along, to keep it out of the clutches of these devil-fishes of the law — receivers — and to carry the depositors on into safety, if it was by any means possible. Members of the Legislature of both branches were told that he and the department were acting thus in regard to deficiencies, and still no remonstrance came from the Legislature to the Banking Department that it should do nothing of this kind thereafter.

Thus it is, Senators, that, while the Superintendent of the Banking Department has been year after year calling the attention of legislators to these very things that are now complained of against Mr. Ellis, the Legislature has remained silent and inactive, and here the Senate is trying him for being inactive.

And now we are told that the superintendent was guilty of delay in the case of the Third Avenue Savings Bank, delay in not sooner passing it over to the Attorney-General. No matter what his excuse for the moment may have been, we are told that he was guilty of culpable negligence because he did not take the necessary steps to snuff out this one bank at once.

And here we find in the testimony before us a case of similar delay, an instance of similar neglect of duty, on the part of the chief executive of the State. It appears that he held this charge of culpable neglect of duty by the superintendent for six long months before he asked for affirmative action. Is the superintendent guilty of neglect of duty, because he does not snuff out one bank? How much more, then, is the executive of the State guilty of neglect of duty, when, after he knows all these facts he remains quiet for six months before snuffing out the superintendent of all the banks. If these charges were true, Senators, if, indeed, the charges contained in the letter to Governor Tilden by this man Best were true, as stated in the Governor's message, I submit whether Governor Tilden, in the interest of all these depositors, in the interest of all these widows and orphans, ought not to have immediately called the Senate together to consider such charges. If they were true, and they remained in the executive department until the first of January last, when the present executive came in, then I submit, whether it was not the duty of his Excellency,

at that time, not to have waited until an appointee had been rejected by this body, but to have presented his charges the very first week of the session to this body for its summary action.

I do not charge, Senators, understand me ; I do not charge on either of the Governors any neglect of duty. There were doubtless circumstances surrounding them, which excused their delay in action. I insist, on this, in charity to them, but I likewise insist that you, Senators, should extend the same charity to this man who is here on trial, and who was surrounded by, at least equally, excusing circumstances.

But, to come to the charge which we have under investigation. It is charged that the Superintendent of the Banking Department has been guilty of culpable neglect of duty ? In what ? Simply in delay — simply and solely in delay.

Mr. Lamb, the deputy in the department, has testified before you, in response to a question put by the Senator from the Twenty-second (Mr. McCarthy), that, in every single instance, without exception, a bank, when found to be deficient, was either compelled to make up that deficiency, or it was reported to the Attorney-General.

Take the case of the Third Avenue Savings Bank, the only case where there was any extended delay. When the deficiency was found, it was reported to the Attorney-General. There was delay, but the superintendent acted on the March examination, and so in every single instance, Mr. Ellis required, either that the deficiency when discovered, should be made good, or he would report the bank to the Attorney-General.

The charge, therefore, of culpable neglect of duty, if sustainable at all, under the evidence here, is sustainable solely and simply upon the ground of delay.

And now, what is the answer of the superintendent to that charge ? His answer is this : “ I then thought, and I still think, that delay was in the interest of depositors, was the dictate of prudence ; I exercised the best judgment which God gave to me, in the interest, not of 250 depositors or of 1,000 depositors, but in the interest of the 800,000 depositors who were under my supervision and in my care.” Was it wise for him to lose sight of the many in order to do what is claimed here — but which I deny — a kindness to a few ? He was superintendent of the whole savings bank system of the State of New York, embracing 800,000 depositors — in round numbers — and covering a pecuniary interest of \$300,000,000. And is it claimed, that he had no right to exercise any judgment, any discretion ? If not, then I submit, Senators, whether he is not entitled to your kindest consideration. Is it claimed, that he must move, whenever he finds a deficiency of a dollar, to throw a bank into the hands of a receiver, although that

deficiency may be not actual but constructive only? If so, you should at once take from him these mere puppet powers, and give to him the right to exercise that judgment which his Maker gave to him, which I submit, under this law, he not only had the right to, but was compelled to exercise.

Is it true that a man can be removed from office because of a mistake in judgment? Is it true that you can remove a Supreme Court judge who has discretionary powers in regard to two-thirds of the orders which he grants, and in a variety of other cases that will occur to any lawyer. Is it true that you have the right to remove him, because three or four or five years after, you find there has been a mistake of judgment on his part? Senators, I submit that that proposition will not be accepted by you.

But, it is claimed that he had no judgment to exercise; that the act under which he fills the chair of Superintendent of the Banking Department, did not give him any discretion. Let us, for one moment, turn to that portion of the act, leaving for the present the first part of the section in regard to "orders": "Whenever it shall appear to the *Superintendent*" not to the Senate sitting around to investigate his acts four years after, but, "whenever it shall appear to the Superintendent" situated as he may be at the time, surrounded by myriads of circumstances of which he can give us evidence to justify his action, but which in fact, are perfect justification, situated as he is. "Whenever it shall appear to the Superintendent that it is unsafe or expedient for any such corporation." Now, let us stop there. I notice the line of reasoning foreshadowed by the distinguished Senator from the Twenty-fifth (Mr. Woodin), in his questions regarding the act of 1871 and the act of 1875. I noticed he seemed to stop after the word "corporation." If there was legitimately a comma after the word "corporation," then there might be some force in the line of thought indicated, but there is no comma there, and you cannot put one there.

Let me read: "Whenever it shall appear to the Superintendent, that it is unsafe or inexpedient for any such corporation to continue to transact business," not inexpedient or unsafe for the "corporation," but when it shall appear to him that it is unsafe or inexpedient for the "corporation to continue" business he shall report to the Attorney-General. So that the phrase will not bear the construction indicated. The superintendent construed this act, as appears from his testimony, as giving to him discretionary power. He says that if it had been the intention of the Legislature not to give him discretionary power, not to give him the right of an exercise of judgment, it would have put in some words of limitation; the word "then" or the word "forthwith" or the word "immediately," then there would have been

no difficulty in construing the section. If this section had read "Whenever it shall appear to the superintendent that it is unsafe or inexpedient for any such corporation to continue to transact business, he shall, *forthwith*, communicate the fact to the Attorney-General," there would have been no difficulty. But the Legislature left the word "forthwith" out of this section — left it out, I submit, intentionally. Indeed any person in the Legislature who had voted to put it in would have done the greatest injury to depositors, and would himself have been guilty of a culpable neglect of duty.

Senator WOODIN — What is the force of the word "*whenever*?"

Mr. CHAPMAN — I had not lost sight of that word at all; "*Whenever* it shall appear that it is unsafe, etc., he shall report to the Attorney-General; but when?" If the word "then" had been put in, or if the word "forthwith" had been put in, it would have limited the time of reporting to the instant of his discovering that it was unsafe. Whenever he shall discover it, he must report, but not necessarily the moment of discovery.

But it is not very material whether that construction of the statute be correct or not. I wish to call the attention of Senators to this, because it seems to me that it is a distinction that we are entitled to here. It is not, so far as this respondent is concerned, a vital question as to whether that is the true construction of this clause or not. If the Superintendent of the Banking Department acting in full good faith and purity of motive in his construction of the intent and meaning of that clause believed he had the right to do as he did under it, if he honestly exercised the best judgment his Maker had given him, then he is entitled to the exercise of your most charitable judgment here.

Now, Senators, let me call your attention to what he had to lead him in the exercise of that judgment. He found, in the first place, that the former superintendent in construing the act of 1871, had exercised that discretionary power. It may not be an absolute excuse for him, but it is not very much in the nature of an excuse? The former superintendent had exercised that power. Not only that, he had, in his message to the Legislature of the State, he had to the Senate which had helped to make him, told them that he had exercised that power, and that, too, in regard to the principal one of these very banks; and no words of reproof came up from the Legislature to him, or from the executive, or from any branch of the government. He says, and I read from a portion of his report where he is speaking of the Third Avenue Savings Bank, which will be found at page 409 of committee testimony, in the fifth subdivision:

"5th. Both of the examiners, in striking a balance, found the liabilities in excess of the assets, but not to an amount, however, which

would justify me in placing the institution in the hands of a receiver. On the contrary, I was clearly of the opinion that with the change of policy in the management of the bank, which had then been inaugurated, and with a reduction of salaries and other expenses, which, I was assured by the managers would be effected, the deficiency in the assets would soon be made good."

The superintendent not only read that law, and, as he swears to you, honestly gave the construction, which I submit ought to be given to it, but he found that the Banking Department prior to his term, had given the same construction to it. Not only that; he found that the Superintendent of the Banking Department had told the Senators, some of whom are now sitting here, that he had assumed to exercise that power. He also found that his predecessor after an examination of this very Third Avenue Savings Bank, had discovered a deficiency of at least \$115,000, and that he had taken trustees' bonds for the deficiency, and bridged them along and thus exercised the right of discretion. He not only exercised it but he told the Legislature that he had exercised it. Mr. Ellis knew that he had done this, and that the Legislature had given no word of disapproval.

Not only would all this seem to justify him, in believing that the law gave him some discretion, in judging as to the proper time for action, but we find that the Attorney-General of your State, having these very cases in charge again and again, has exercised that same power of discretion.

Again and again, as appears from the testimony after the Superintendent of the Banking Department had reported a bank to the Attorney-General for deficiency of assets, has he granted extensions of time, to give these banks an opportunity to make up these deficiencies. We find thus another branch, and that the law branch of our State government, exercising the same rights of discretion as Mr. Ellis claimed the law gave.

It has been hinted around this circle, and it may be claimed finally that the Attorney-General did this on the suggestion of the Superintendent of the Banking Department. Is the Attorney-General's office run by the Superintendent of the Banking Department? After the superintendent has passed over a bank into the hands of the Attorney-General, it is then the Attorney-General's business to do what will be best for the interest of the depositors. He then has the discretion, he then has the judgment, and it seems that he has repeatedly exercised the right to grant these delays.

Hence I contend that not only was Superintendent Ellis entitled in view of all these circumstances to put his construction on the act but it would have been unwise not to have given it that meaning.

And now I submit to Senators that, if they had put in this clause

of the law the word "forthwith," "then" "at once" or any equivalent word, they would have been guilty of culpable negligence, and that of the grossest kind ; and I will give you an illustration or two, which will prove it so. Suppose the word "forthwith" had been put in there, and the superintendent, in the examination of a bank, should find a deficiency, if you please, of assets of \$100,000, in the midst of such a panic as occurred in 1873, what could the superintendent do under the act, assuming it corrected as suggested ? He would find this law staring him in the face, providing that he should "forthwith" report that bank to the Attorney-General, unless the deficiency shall at once be made good. It would be impossible to raise any large amount of money in times of panic in Wall street, and he would be required by the law to *forthwith* put that bank into the hands of a receiver. Should he do it ? Ought he to do it ? Take the case of a young savings bank, the first year of its organization. There is not a single savings bank in the first year or few months of its organization, which, if thrown into the hands of a receiver, would be able to meet the calls of its depositors. It is a necessity that the trustees, or some one connected with the bank, should have the right and the power to, in some way, carry that bank along into safety. The first year or two depending upon the location of the bank, and the amount of confidence it inspired, and the number of its depositors, the first year or two the bank has to be assisted again and again. But the superintendent, finding this law staring him in the face, with the construction that he must "forthwith" report to the Attorney-General, would be compelled to hand over every one of these young savings banks, thus situated, to the tender mercies of a receiver.

Again, in the examination of a bank, suppose he finds a \$100 deficiency of assets. It is claimed here that nobody connected with that bank should be permitted to put in trustee notes or trustee bonds. If a mortgage should be put in, it is claimed to be without consideration, and may be defeated upon that ground. What is a superintendent to do ? Why, in times of depression his examiner running down through the stocks and the real estate of a bank, finds and reports this deficiency ; he starts "at once" to the Attorney-General with his report, requiring this bank to be wound up, and the Attorney-General must take his papers to-day, and to-morrow applies to the court. In the *interim* stocks have appreciated, and by the time he has got to a trial in the court, the bank proves that its stocks have gone up in value — shows itself not to be insolvent, but solvent, and sound and safe ; and the court cannot then put the bank into the hands of a receiver, and the superintendent is beaten.

But what is the result ? The bank is just as effectually ruined, its depositors are just as effectually injured. The confidence of the pub-

lic is just as certainly gone, as though it had gone into the hands of a receiver at once. Once let the Superintendent of the Banking Department pass a bank over into the hands of the Attorney-General, and the reporters catch the fact, and scud away to New York with it, and the New York papers herald the fact to the world, that such a bank has been reported to the Attorney-General as being insolvent, and the confidence in that bank has gone; and although the Supreme Court, on its examination may be compelled to declare that the bank is entirely solvent and sound, and although the court may find it impossible to put it into the hands of a receiver, yet, the very fact that the superintendent has handed it over to the Attorney-General, ruins and destroys the bank.

These savings banks have only for their capital the confidence and faith of the people. They have none other. Take away that confidence, undermine that faith, and a savings bank is just as certainly ruined as though its depositors should commence a run upon it; and now is it sought to force a construction upon this law such as will compel, in the case of all young banks or in the times of crises or in times of panic, when values are depreciated, is it sought to put a construction upon the law that will compel the superintendent to undermine this confidence or destroy this faith by reporting it to the Attorney-General.

Now, a very pertinent question was asked some time during this investigation by the Senator from the Thirty-second (Mr. Vedder), and that was whether, in any cases, by due exercise of this leniency, by the exercise of this nursing policy on the part of the Superintendent of the Bank Department any bank had been saved, I had previously looked over the records of these banks, and had found that quite a large number of them had been saved by just this lenient policy. It was hinted here, and has been echoed again and again by my friends on the other side, that where you find a deficiency of *income* in the examination of a bank that bank should be immediately put into the hands of a receiver. It indicates we are told, that the seeds of insolvency are growing there. This may be true. This naturally strikes the mind of a merchant or of any man, indeed, as having virtue in it, but it does not necessarily indicate it as the facts show. Let me call your attention to what appears in the evidence before you. At first, it was assumed by nearly every one around this circle that these reports showing a deficiency of income, showed an *actual* deficiency. That is not true. Senators assumed that "deficiency of income," was an actual deficiency of the bank for the year preceding. The evidence show that is not true. That deficiency of income which has been spoken of here, is simply an estimated deficiency for the running over the time when the



examination was made. The examiner examines a bank, say the forepart of February. He looks over the assets and liabilities, he looks over the resources and expenditures. Of the proceeding year? Not at all. He looks over and estimates what the liabilities of that then present year will be up to the first of the January following. He then looks over what will be the income for the remainder of the year, and estimates that; his estimate may be correct and it may not. What does this deficiency of income come from? Certain stocks which the bank holds to-day possibly may pay no interest; and yet, to-morrow, or next week, or next year there may be a decision of some court to the effect that these bonds are good. Take one of the cases we have here, as an illustration, the case of certain town bonds. We find that the Supreme Court at Special Term and at General Term have held those bonds good. So far, the law is with the bank, and we find in the case of various other securities; although they may not be paying interest to-day, they will, if the court continue to hold them to be good, be compelled to pay not only the interest of to-day, but all back interest; so I find there are some eight or nine of the savings banks of the State, that have during these last three or four years, at one time or another, shown a deficiency of income, which have been nursed along, and are, to-day, showing not only more income than expenditures, but more assets than liabilities. These are institutions which will serve to answer the question which the Senator from the Thirty-second (Mr. Vedder) asked, in addition to those already suggested.

Not only that, but we find that banks which have shown a deficiency of assets, under these lenient methods of supervision have come out from that condition, in spite of the hard times, and have come to have a surplus of assets, and to-day are sound and solvent, and give every indication of prosperity. Not only that, but we find, Senators, that banks, which have shown both a deficiency of income and a deficiency of assets, have come out sound and solvent, and are, to-day apparently prosperous.

Is the superintendent not entitled to the full benefit of these facts as indications in favor of his line of action?

Let me suggest another thing in connection with this. There are two methods of supervision. There is a blind, an automatic, a murderous system of supervision which goes on like the car of Juggernaut, crushing down every victim that happens to come in front of its wheels. On the other hand, there is a kind, lenient, politic, and charitable supervision. Mr. Ellis chose the latter. He was, perhaps, mistaken in so doing, but it was his best judgment, and that judgment was the best God had given him, and was he not entitled to be guided by it? His was a kind and charitable supervision, which aimed, at least, to save the banks for the protection of depositors.

It so happened, Senators, that the respondent was made Bank Superintendent at the very crucial time in the history of the department. It is easy to exercise a supervisory power over these institutions when values are appreciating — when, indeed, they are not depreciating, when values are remaining upon a common level, it is an easy work, for there will be no failures. But when, as during the administration of the present superintendent — during they past three or four years — year by year and month by month, day by day and almost hour by hour values have been falling, falling, steadily, constantly — when during such a time a superintendent is required to administer a Banking Department or any other department which is supervisory in its character, when comes the trying time of the man's life ; and I insist that there are very few men who under those circumstances and in those times would be able to stand the test ; and fewer still who could stand the test as well as this present superintendent.

It is said because these banks have failed that the superintendent is responsible. Why, there is not a class of business throughout the whole country but will show a larger percentage of failures than these savings banks. Take private individuals ; take partnerships ; take not merely the banks in this State ; take the banks throughout the United States which are under the national supervisory system — take all kinds of moneyed institutions, here and everywhere, and we find that, this universal depreciation of values has caused, as it certainly and surely always will cause, failures, and no kind of supervision can ward off or prevent them.

But there has been a broader view taken of supervision within the last year or two, in some of our neighboring States, and senators will permit me to call their attention to just one or two instances as illustrating the other kind of supervision that is I think beginning to obtain.

In the State of Massachusetts, three years ago, there was a life insurance company. It was being attacked ; wreckers were after it. The confidence of the people in it was being undermined ; and it looked as though the company was bound to go into the hands of a receiver. What does the Superintendent of the Insurance Department do there ? Go down and examine it and on finding a deficiency of assets, pass it over into the hands of a receiver to be crushed ? On the other hand, looking over the broad field, he takes the insurance company under his hand, nurses it, carries it along ; and to-day it stands as one of the most prominent institutions of the kind in the State of Massachusetts, saved, and the policyholders saved, and the insurance interest of the State saved by just that kind of policy. And two weeks ago in the State of Connecticut, what occurred relative to another Insurance company ? On examination it was found there

was a deficiency of assets from \$1,000,000 to \$4,000,000, and yet what does the department of that State, in conjunction with the Supreme Court, do in the matter of the supervision of that company? Does it pass it over into the hands of a receiver? If it had been done, the policyholders would not have received twenty-five cents on the dollar. Not at all; but the broad, liberal, charitable view was taken. The State department of Connecticut, in conjunction with the Supreme Court, put new men in charge of it, and the company promises to go on to success. It certainly will unless outside influences are brought to bear against it to undermine and crush it.

Now, then, Senators, I will take up a few of these banks which have been considered by my friend on the other side; but in doing that, I start with this proposition, that the superintendent has the right to exercise his best judgment as to when is the proper time to report a bank to the Attorney-General, provided he does it honestly. If that proposition does not meet the views of Senators, I will state another. We are not limited to that ground. I insist it is the correct ground under the law, under the construction which was placed upon it by his predecessor, and under the construction which has been given to it by the Legislature. But we are not compelled to rely upon that. Starting either with that proposition, or starting with the proposition that *Mr. Ellis believed* he had that right, under his honest construction of the law, especially when he found that his predecessors had so construed it, had told the Legislature of it, and the Legislature had never disapproved of that construction — starting with either of these propositions, we will now look at his action in the case of one or two of these savings banks.

Senator STARBUCK — If the counsel will permit me, I desire to invoke attention to the discussion of the question, as to whether or not the present line of argument does not repeal the power of removal, provided the incumbent can plead “good intention.”

Mr. CHAPMAN — Mr. President, it has been repeated again and again around the circle that no trial need be had under the statute which the Senator suggests this line of argument would repeal; that all that is necessary to be done is for the Governor to ask the removal of this officer, and that the Senate, without trial, without counsel — indeed, it has even been suggested that the respondent is not entitled to be heard here, except by courtesy — would have the right to remove him. If that constructing of that statute be correct, then there is not any repeal, and the Senator from the Eighteenth (Mr. Starbuck) would concede it. But suppose we concede that proving “good intentions” would take away the power of removal. It takes it away just as proving the official a perfect man would take it away. In fact, my argument does not tend to repeal or take away the power. I am

endeavoring to show that it ought not to be exercised ; that is all The act does not compel the "consent" of the Senate. Senators may give or withhold consent. I am urging that when an officer has honestly discharged a discretionary duty, it would be a wicked thing for the Senate to arbitrarily "consent" to removal because he happened to make a mistake of judgment only. It is true that a man gifted, at least with so much knowledge, judgment and ability as to commend him successfully for appointment to the Governor and Senate, it is true that that man, after his appointment, is not to exercise that knowledge, to exercise that judgment, to exercise that ability, to exercise even the attributes of mercy provided he does so honestly, earnestly and sincerely, performing his duty according to the light which God gave him. If he does this, I ask any body whether he can be removed except by the arbitrary exercise of the power that has been claimed here by some senators, to wit : " If the senate wish to remove they can remove, with or without cause ; and if that broad ground be taken, then I ask Senators to say so, and not put upon the record a vote that this respondent is guilty of these charges. Put your vote upon the broad ground that you have the *right* to remove him any way, that, in your view, it is best for the interests of the people of the State that he be removed ; not that these charges are proven, but that he should be removed on the broad ground of public policy.

But I was proceeding to take up the " Mechanics and Traders' Savings Institution," and this brings me to the consideration of the first message which was sent by his Excellency, the Governor, to the Senate ; and now, Senators, it may startle some of you who have not read that message, when I announce that there is not one material item of proof contained in the message which he cites, and upon which he acts ; not one single material item that is not proven by the evidence before you to be absolutely false ; and that, too, by the very men on whose statements the Governor framed this message and sent it in to you. Senators, I do not state this with any idea of impugning the motives of his Excellency in the slightest degree. I state it as showing how easy it is for even the highest officer of the State to be mistaken, to be misled, to be deceived.

I will very briefly call your attention, then, simply to points of evidence, proving what I say, and it is proper I should, in the first instance, call your attention to the very first line of his Excellency's message :

" I have received from William J. Best, who was appointed by the Supreme Court in July, 1876, receiver of the ' Mechanics and Traders' Savings Institution, charges against De Witt C. Ellis.' " \* \* \* Is that true ? Is the statement in this first sentence literally and accurately true ? One of the charges made against Mr. Ellis, con-

tained in the Governor's second message, is this : that, in his report to the Legislature, Ellis stated an untruth when he said, "On my recommendation the Third Avenue Savings Bank was closed on the motion of the Attorney-General." In fact this was proven to be true, not simply by Mr. Ellis himself, but by the Attorney-General. It is in evidence, uncontradicted, that that portion of Ellis' report was literally and accurately true ; and even my learned friend on the other side, when he comes down to that particular charge, is compelled to concede that it is true ; but still, to use his language, "It is not literally a lie, but it is not the whole truth." The whole truth? The superintendent had given three pages, and I do not know but four or five to the consideration of this Third Avenue Savings Bank. I do not know but that my friend thought that he should have gone over the history of that bank from the time of its first organization down. He had given enough, I submit, in all conscience. Our opponents investigated this charge contained in the second message of the Governor, and at last, unable to say that Ellis' report was false, they concede it was literally true, but they say he did not state the whole truth.

Now, let us see. Has the Governor, himself, stated the whole truth in this very first sentence of his first message? "I have received from William J. Best." Had he? By turning to pages 4 and 5 we find the message which he says he received from William J. Best. It is a letter dated October 13, 1876, three months before his Excellency came into power, and while Governor Tilden was occupying the executive chair. Not only that, but at the bottom of page 5, you will find this letter is directed "To his Excellency Samuel J. Tilden, Governor of the State of New York." So that these charges which the Governor says "I have received from William J. Best," and which are attached to his message, we find had been sent to Gov. Tilden, and had remained there during the time of his incumbency. Inasmuch as Gov. Tilden would not withdraw an official document from the executive files, it is to be presumed that paper remained there. Indeed, if it had been withdrawn, then Mr. Best would have directed his letter to Gov. Robinson. Instead of that, Gov. Robinson attaches to his message the papers which he says he received from Best, and the papers themselves show he must have received them from his predecessor. But that may be a slight thing. I merely allude to it not in the spirit of finding fault with his Excellency. I do not desire to do that at all, and I do not bring it up in connection with the fact that this message is not thrown out to the light until after a nominee has been sent in and rejected by the Senate ; I pass all that. I bring it up merely for the purpose of showing that even the highest officer of the State government, with all the power of the position, and gifted with all the mental ability that the officer should possess, even he, in a

grave public document may make some errors, and some mistakes, and some misstatements.

But this is not all in connection with the first message. On page 2 we come to the proofs which he alludes to. The Governor says :

“In support of the charges are submitted,

1st. A balance sheet, Schedule A, made out by George N. Pratt, who was at the time general book-keeper of the bank, and verified by his oath, showing a deficiency in July, 1874, of \$201,017.57.”

Now, the proof is that George N. Pratt did not “make up” any “balance sheet” whatever, that he has not verified any balance sheet under “oath ;” and I ask Senators to turn their attention to the evidence on page 4, and look at what is claimed to be that balance sheet. Here is the affidavit attached to it :

“CITY AND COUNTY OF NEW YORK, ss. :

George N. Pratt, of the city of New York, being duly sworn says, that in July, 1874, and for some time previous and thereafter he was general book-keeper of the ‘Mechanics and Traders’ Savings Institution’ of that city ; that he has examined the schedule hereto annexed marked A, and that it includes all the assets of said institution at the time named.

GEORGE N. PRATT.”

By turning over to Mr. Best’s cross-examination on page 130, you will find the following :

“Q. Do you recollect that these figures (that is the figures against these assets on page 4), were written in there at the time Mr. Pratt signed or not ? A. That schedule was all made out before Mr. Pratt came to the bank, and what I wanted him to certify was whether or not those covered all the assets of the institution up to that time, and not the market values.”

Pratt does not swear as to the market value. He certainly does not certify as to the correctness of the liabilities or their amount or market value.

“Q. This certificate does not certify at all as to the correctness of either the liabilities or their amount or their market value ? A. He certifies that includes all of the assets.

Q. He does not certify as to the market value, or the amount of the liabilities ? A. No, sir.

Q. He simply certifies to the assets ? A. Yes, sir ; that is all.

Q. And you carried out the prices of those assets ? A. Yes, sir.

Q. Did you call Schedule A to which I have called your attention, a balance sheet which you sent to the Governor ? A. I do not know that I sent it up as a balance sheet.

Q. Did you say to the Governor that it was made up by Mr. Pratt?  
A. No, sir; I do not think I did.

Q. When the Governor in his message, which he sent to the Senate alludes to the proof of these charges, his first allegation is, 'A balance sheet made up by George N. Pratt, who was at the time a book-keeper of the bank;' did Mr. Pratt make out that balance sheet at all?

A. No, sir; he did not make it out.

Q. He did not certify as to the values upon it? A. No, sir; he did not certify as to the values."

On page 136 of the committee testimony he is still further examined:

"Q. Then you go on and change those values, carry them out on this Schedule A which is attached to the letter to the Governor, and you get Pratt to sign this certificate to the effect that he has examined the schedule hereto annexed marked Exhibit A, and that it includes all the assets of the said institution, and the Governor, in alluding to this, calls it a 'balance-sheet made by Mr. Pratt;' did you intend to deceive the Governor and lead him to think Mr. Pratt had made this balance-sheet himself? A. No sir.

Q. It is evident he was deceived by this paper you sent him? A. I don't know how he could be.

Q. Is it not true when the Governor says as the first item of proof which he submits to the senate; 'the balance-sheet made out by Mr. Pratt,' is it not evident he was deceived by this paper? A. Yes, sir.

Q. Is there any thing in your letter that would tend to undeceive him? A. No, sir; there is nothing bearing on that point.

Q. What possible effect could that certificate, attached to that schedule, have upon the Governor, except to deceive and mislead him with your letter? A. It was not so intended.

Q. Well, it did, in fact, didn't it? A. It would seem so from your construction of it."

Here we find that, although the Governor in his message presents his first item of proof as a "balance-sheet made out by George N. Pratt," etc., Pratt did not make it out at all, he did not verify it, he only swore that the bank had the assets contained therein, and not as to their value. The Governor was evidently deceived; he was evidently mislead. If he had scrutinized Pratt's affidavit with care he might have found out the truth. If the Governor were on trial here on a charge of culpable negligence it might be alleged that he did not scrutinize that affidavit and "balance-sheet" with sufficient care, and still, if I were a Senator, I would vote "No" on such a charge, because the letter and documents were well calculated to deceive any one. His Excellency, if he had know or mistrusted there was something more, or something wrong, back of it, could have found it out, but he did not know there

was any thing wrong there, he was not looking for it; and so it is sometimes I suppose, with the Superintendent of the Banking Department; and I invoke for the superintendent the same charity as the Governor is entitled to in connection with his statement of this item of proof.

But, to come to the second item of proof which the Governor presents :

"In support of the charges are submitted the testimony of William Floyd and Ira W. Gregory, two of the trustees of the bank, contained in their depositions, that they, as a special committee, appointed in July, 1874, to examine its condition, reported a deficiency." I can refer, Senators, if necessary, to the testimony, and the page where it is found, which will show they were not "appointed to examine the condition of the bank" at all. The resolution under which they were appointed did not give them that power, and the testimony shows that they did not have it; and, if any Senator doubts this, or, if my friend on the other side doubts this, I will refer him to the page and the item of the testimony, which proves it. That statement, then, I assume to be untrue.

But the Governor says these men "reported a deficiency of assets as compared with liabilities of \$181,505.71." The evidence shows, when it came to be examined into, that these men found they had made a mistake of \$73,000, having charged it in the liabilities twice, and after that they found they had left out a small item of assets amounting only to \$102,000 cash the bank had on hand, and even then they had not got to the bottom. But the Governor continues: "Mr. Floyd deposed further that the trustees having, notwithstanding their report, declared their usual dividend, he, through F. P. Bellamy, his attorney, in September, 1874, laid copies of the report of himself and Mr. Gregory, accompanied by the schedules above mentioned, before Mr. Ellis, and requested him to institute proceedings to protect the creditors; that thereupon Mr. Ellis went to New York, and, in person, examined the condition of the bank, and after such examination, Mr. Ellis admitted to Mr. Floyd that the report of himself and Gregory was substantially correct." I can refer Senators to the page in which Floyd himself swears that Ellis did not admit any such thing after such examination; and the Senators who were on the committee will bear me out in the statement, that neither he nor Gregory saw Mr. Ellis after this examination, except once at the Metropolitan hotel and then Mr. Ellis alluded to the deficiency as being only \$25,000. But I will read on: "And that the bank was insolvent, and promised to take immediate measures to protect the depositors, that he (Floyd) frequently between that time and June, 1876, urged Mr. Ellis to take some action in the matter, but that until the last-named date he neg-



lected to do so." It is in the evidence given by Floyd himself, that Floyd, from that time down to the investigation, did not see Mr. Ellis after that examination until the time of the examination before the committee, so that statement about his having "frequently urged," etc., is proven to be false.

"The testimony of F. P. Bellamy, attorney at law, of Brooklyn, contained in his deposition to the same facts and to the same admission to him by Mr. Ellis, after his personal examination of the condition of the bank." Mr. Bellamy swears he never saw Mr. Ellis at all, after the examination, so that that statement is proven to be false. "And that he (Bellamy) had, on behalf of the two trustees above named frequently urged Mr. Ellis thereafter to take action to protect the creditors, and had mailed several letters to Mr. Ellis to that effect." I can refer Senators to the testimony of Mr. Bellamy, to the effect that he never saw Ellis after the examination, and that he did not send but two or three letters to him, and he had no copies of those. He could not recollect, positively, of sending but two, and one was in connection with the examination, and the other was after the bank had gone into the hands of a receiver. Hence that statement is untrue.

In conclusion, the Governor says: "This recommendation (of removal) is made as a basis of action on the part of the Senate, and upon the assumption that the depositions annexed to the charges are true and make out a *prima facie* case."

Well, now, it turns out, Senators, on investigating this testimony, that not one single one of those material items which the Governor assumes to be true, are true; indeed, they are proven to be false by the very men themselves on whose statement the Governor relied to draw up his message. It merely illustrates, as I said before, how liable we all are to be mistaken, and how necessary it is that every one should invoke, before passing sentence, the broadest charity to guide us in our judgment, charity for the acts of our fellow-men.

Mr. President, I see I am taking up more time than I expected, and I will pass along. If Senators will take time to read what is in the evidence, without my referring to is, I can pass along more rapidly. If any Senator suggests that I refer to the pages where I find the testimony which contradicts the message, I will be able to accommodate him in every case. Senators can then make a minute of the pages against each one of the charges to which I have called attention. It is in the committee testimony in each case.

Senator GERARD.—Mr. President, I suggest that as we have already expended two hours in this session, if the counsel desires it, that we take a recess.

MR. CHAPMAN — Mr. President, I certainly am obliged for the suggestion of the Senator from the eighth (Mr. Gerard). What I am more afraid of than any thing else is that my throat may prove treacherous by reason of this cold, and my only safe course is to go on as long as it is oiled up by keeping it in motion. I think I can get along better than if I were to stop and try to go on again this afternoon or to-morrow.

In this Mechanics and Traders' Bank, the first report to which suggestion has been made, is the report of Reid and Ellis, made October 5, 1874.

The Senate will, perhaps, have lost sight of the fact, and still I think it has a bearing upon the action of the superintendent, that prior to that time, in March, 1874, there had been an examination of this very bank by Reid and Vrooman, in which examination they had found a surplus. Reid and Ellis made the examination of October 5, 1874, and they found a deficiency of some \$24,000. Look at the smallness of this deficiency as compared with the amount of assets. Here is a bank possessed of assets to the extent of two and one-half million dollars, and on examination they find a deficiency of one per cent only. Why, Senators, under the laws of your State, in force to-day, fire insurance companies of other States doing business in this State, cannot be expelled from the State until there is a deficiency of twenty per cent upon their capital, and here a deficiency of one per cent is looked upon as an alarming thing — a deficiency of only \$24,000 out of an amount of assets of \$2,500,000.

There is nothing in the amount of that deficiency that is alarming.

If Senators will turn to page 149 and will make minutes against each one of these items of assets, I will refer them to the page on which they will find the testimony that will justify the valuation of those made by Reid and Ellis. It was charged, and, indeed, that appears in his Excellency's message, that Reid and Ellis, in making this examination in 1874, did not make an honest and a fair examination; that they did not give fair values to the assets; that they overvalued them. Hence, I ask you to go down through these items one by one, and I will refer you to the pages to show you that they did not make a conservative valuation in every single case that was disputed, with the exception of one item of Alabama bonds, upon which I will comment. It is proven that their valuation was given under rather than over the value at which they were entitled to be put.

Take the item of "bonds and mortgages," the first item contained on page 149. If Senators will refer to pages 76 and 77, and 204, they will find that even Floyd and Gregory, the men who made this complaint to the Governor, the men whose statements are carried to the

Governor by Mr. Best, swear that these bonds and mortgages were worth the amount that Reid and Ellis carried them out in this report. Here we find — and it is one of the peculiarities that I may as well mention right here — we find in this bank all the elements of success, except there are two men in it who are bound to rule it, and, because they cannot rule it, they ruin it. This bank is ruined by Floyd and Gregory, and you may look over this testimony and you will find no other explanation of the disaster that followed that bank, except in the action of those two men who were making these charges. Because they could not succeed outside of the Governor they come to him with these charges, proven on this trial to be absolutely false, by themselves; and still these are the men who ruin this bank; and these two men swear that the valuation of these mortgages in the complaint referred to in these pages is correct.

Mr. Best, also, when here upon the stand, testified (see page 450, Senate testimony) that the mortgages in the case of this bank were all exceptionally good, and every one but one or two had been paid up without foreclosure, so that I can assume, I suppose, without going any further, so far as the bond and mortgage item is concerned, that neither Mr. Ellis nor Mr. Reid overvalued it. The “Tennessee State bonds” are referred to on pages 10, 74, 245, 247. You will find by reference to those pages that Floyd and Gregory swear that the value of these Tennessee State bonds at that time was from \$2,000 to \$3,000 more than Ellis and Reid in their examination made them; so they are all right.

I come to “Alabama State bonds.” That is the only item in this whole list of \$2,500,000 of assets about which there can be any question. By referring to pages 204, 205, 74, 183, 247, you will find precisely the course which was taken by Mr. Ellis and Mr. Reid to ascertain the value of those Alabama State bonds. Mr. Ellis went down with Mr. Reid to see Mr. Morrison and Mr. Harburger, president and cashier of the Manhattan bank, two men certainly with whom it was safe to advise, and inquired as to where they could get true information as to the value of the Alabamas. By them they are referred to some broker who they assure him would be familiar with the quotations. Mr. Reid goes to that broker and makes an investigation. All he can find is that there are seventy asked for Alabama’s and thirty-five bid; no sales. He comes back to the Manhattan Bank, and reports this. Then comes the question as to what shall be the value to be given to these Alabama bonds. It becomes a subject of discussion between them all, and they come to the conclusion that splitting the difference would be the fair thing to do, and they put them in at fifty. This may have been a mistake of judgment, but if you will read the testimony, gentlemen, you will find it is an honest

mistake, in view of all the evidence they could get concerning them. But, suppose it is a mistake, what then? We find that these very men, Floyd and Gregory, put in the value of these Alabama bonds, as appears from their testimony, at forty. Mr. Ellis and Reid put them in at fifty. There is only a difference of ten per cent—comparatively a small amount.

The “North Carolina” and “South Carolina” bonds I put together in a block, and I refer you to pages 120 and 207, where you will find that after this examination, Gregory and one of the other gentlemen—I think the president of the institution—were appointed a committee by resolution of the board of trustees, to go into the street and see what they could get for these North Carolina and South Carolina bonds; and they do so, and come back and report to the board, as it appears in the evidence, that they can sell them for \$60,000 in cash. The difference between the valuation that Ellis and Reid put upon them in their examination, and the amount of money the bank can realize out of them within a month after that, is only a difference of \$700, as appears by the testimony of these very two men who were trying to ruin the bank or to get the control of it themselves.

Now I take up the block of municipal bonds, and I refer Senators, to pages 210 and 211. The values which Reid and Ellis put upon those bonds, nearly \$1,200,000 in amount, were beneath the values which the bonds were actually worth. Indeed, before three months had passed away, these bonds had appreciated from ninety-eight and 100, to 104, 105 and 106, a constant appreciation of this million and over of municipal bonds.

Taking up next the “banking-house,” I refer to pages 102, 108, 211 and 223. We had three persons who swore that its value was as much as Ellis and Reid, put it at here, and some of the witnesses put it over that, and there were but two persons who put a less value on it. So much for that. The balance of testimony on that item is with us. I refer to pages 106, 108, 109 and 186; as to the value of the “two houses in Brooklyn,” our testimony overbalances theirs on the question of fact, so far as the valuation given to these houses is concerned.

“One house in East Forty-fifth street, New York.” There was no contest over that; I refer to page 212. I may say in connection with this item that the Senators, by comparing the amount of bonds and mortgages as given on page 149, with the same item given on page 115, will find a difference of \$16,000 which is accounted for by this house on Forty-fifth street. It is purchased by the bank on a foreclosure of a mortgage which, in the former report, appeared in the list of bonds and mortgages. “The suspense account, balance of bankruptcy clause.” On this point I refer Senators to pages 247, 248 and 235. This is only carried out at \$10,000. The testimony was sufficiently

clear and distinct, I submit, if the Senators will refer to it, to warrant Mr. Ellis and Mr. Reid, in giving at least that valuation. This is an account that at one time amounted to \$100,000. It had been cut down in the reports to the department to something like \$40,000. The department had cut the value down in the preceeding year to something like \$20,000, Ellis and Reid put the value at \$10,000, although they had shown to them a letter by a respectable attorney for the receiver in this case, saying that the estate would undoubtedly pay thirty cents on the dollar. Instead of taking thirty cents on the dollar, on the whole amount of the claim they cut it down to \$10,000, "cash in bank, cash in Chatham Bank, etc."

Neither of these items were disputed. Against each item you can put page 212, and if Senators will refer to pages 213, 214, 151, 152, they will find there was instead of a deficiency an actual surplus at the time.

On this examination Reid and Ellis found an apparent, a constructive deficiency of only \$24,000 in a bank where the amount of assets was \$2,400,000 ; but one per cent.

There has been a good deal said about the character of the assets in this bank. Out of the \$2,400,000 you find what ? You find \$2,200,000 of the best securities in any bank in the State of New York ; municipal bonds to the tune of \$1,000,000 and over which have largely appreciated, some of them, since then, having gone up to 114 ; mortgages to the extent of \$1,000,000 nearly ; other real estate and other property over which there is no question. And my friend on the other side talks about \$400,000 of the Southern securities ? In all of these Southern securities, there are only something like \$200,000 carried out.

But, Senators said, southern securities no decent bank would invest in. Wouldn't they ? It happens that nearly every bank in the city of New York has invested in just this kind of securities. I ask Senator's attention while I allude to a few institutions which have done so. Here is a bank—and I avoid mentioning the name, because it has been alleged in this discussion that a bank properly managed would not invest in these securities. I assert on the other hand that the best managed banks along back, in 1871, 1872 and 1873, invested in just this class of securities and did it over and over again. Since then, for fear people would think they may have been mistaken in their judgment, their managers have been marking them off to profit and loss. They then ceased to return them to the department and have refused to publish them in the report. Here is a bank with assets to the amount of \$6,900,000, with a surplus of over \$300,000, having North Carolina bonds. Another bank with \$7,000,000 assets, had Missouri, Georgia, Texas and other southern State bonds. Another bank

with nearly \$4,000,000, had Tennessee bonds. Another bank with \$9,000,000, had \$150,000 South Carolina bonds. Another bank with \$2,200,000 of assets, had Tennessee bonds. Another bank with \$3,000,000 of assets, had North Carolina bonds. Another bank with \$12,000,000 of assets had Tennessee bonds. Another bank with \$12,000,000 of assets, had Tennessee and Georgia bonds. Another bank with \$1,000,000 of assets, had North Carolina bonds. Another bank with \$1,000,000 of assets had Georgia and North Carolina bonds, and the list is not complete yet. These best banks, the strongest banks, obtained these very securities, either in the purchase of them permitted under their charter or by virtue of the "Available Fund Clause," which has been one of the most pernicious clauses contained in the charters of banks from their organizations, and which year by year the superintendents of the department have been calling upon the Legislature to take away.

What do we find, then, as to the character of this bank's assets? Only \$200,000 of questionable assets out of \$2,400,000 of as good assets as you will find in or out of the State of New York, but only this small amount. And now what? It is claimed this small amount would have put this bank into the hands of a receiver. It would no more have had that effect—it would not have been an impulse in that direction—had it not been for the action of those two trustees.

But a deficiency of \$24,000 was found on this examination of Ellis and Reid—not an actual but a constructive deficiency—and now what was done? These trustees are required to make up this deficiency, There is correspondence passing between Mr. Ellis and these men connected with this bank. My friend on the other side repeatedly assured the Senate that, after the discovery of the deficiency, the department did nothing; that absolutely nothing was done. He tells us "there was a deficiency discovered, and nobody around the department did any thing, but let it pass along."

Senators, in not one solitary instance, is this statement true. Except in the case of the Third Avenue Savings Bank, you cannot find a case where there has been a deficiency of any magnitude discovered, a deficiency of any appreciable magnitude, where the department has not immediately taken action, either in the form of writing letters to the managers, telling them—not issuing an "order" which amounts to nothing—but proceeding under the subsequent provision of this act, telling them: "Gentlemen, you must either make up that deficiency, or I will report you to the Attorney-General;" and in every single instance, as testified to not only by Mr. Ellis, but by Mr. Lamb, has this been done without an exception. Either they have been required to make up these deficiencies or they have been handed over to the Attorney-General; and the only case, as I have said, of any appreciable

delay is in the case of The Third Avenue Savings Bank, to which we will come presently.

In regard to this deficiency, the superintendent writes to the president of the bank, requesting the officers to make that up. The secretary of the bank replies that he is sick, that this is a matter that should go before the board, and that the matter will come before the board at the first meeting, which causes a delay of two or three weeks. There is a meeting of the board; they appointed a committee to confer with the superintendent, and when the question is voted upon by the trustees as to whether they will appoint this committee to consult with the superintendent, you find these two men Floyd and Gregory, doing what? Voting against the appointment of a committee to consult with the superintendent as to what is best to do. But it is carried in spite of them, and the committee do come up and consult with the superintendent. They bring up the then present value of these stocks and bonds, and show the superintendent that, if he were to take that very report which he had made, take that very examination as the basis of his action, and go to the Supreme Court with it, they could show by the then present value of the bonds, that there was no deficiency, and he would be beaten in the court. There was one item of Brooklyn city bonds, \$140,000, which, between the time of that examination and the time these gentlemen came up and conferred with Ellis, had been sold at a profit beyond what Ellis had valued them at, a profit of some \$14,000. This profit wiped out one-half of that deficiency with actual hard cash, and the bank then had it in its till. I apprehend that that portion of that deficiency was made good. That is not all; when you come down to the first of January, you find these municipal bonds have appreciated from ninety-eight and 100, up to 104 and 105, and they have gone on appreciating since then year by year, and in not a single instance of any of these bonds, except the Alabamas — has there been a depreciation. On the other hand, there has been an appreciation. By January 1, 1875, I assert that this deficiency had been made good, and that the superintendent would have been powerless in attempting to hand it over to the Supreme Court.

What do we find during the year 1875? The superintendent, looking at these two and a half million dollars, of good assets, as a whole, knowing that the difficulty with their bank only arose from the quarreling of its trustees. Upon their promising to remove that difficulty, he relies, and I submit he has the right to rely, upon his conviction that that bank is going on to success. Especially has he the right to rely upon it when he leaves in that bank Floyd and Gregory, who were antagonistic to the president and other officers, to watch the bank and see that there is no wrong done, and that there is nothing

going on out of the way. Certainly a superintendent, with these men having done what they had, to overthrow the president, with these men remaining in the bank to report any kind of wrong, to enable them to get control, would have the right to rely upon that fact. It would be a circumstance which would tend to lull him into security if no complaint came from that quarter.

The bank goes on through the year 1875, and we find, when we get at the minutes of the trustees, that these two men are keeping up the quarrel. Floyd, as appears, by votes cast again and again, week after week, is trying to get himself elected president. Finally he brings two actions, one in the Supreme Court, to remove Mr. Conkling, the then president of the bank. He failed in his effort to get him removed. but, in the October of that year, after these suits have been bruited around, the depositors begin to get wind of the fact of this quarreling, then the deposits begin to be withdrawn. In the meantime, also, the Third Avenue Savings Bank had been put into the hands of a receiver and a general alarm was awakened among all depositors. When we come down to the reports of January, 1876, we find that the attention of the superintendent is brought again to the condition of this bank. He had the right to rely upon all these circumstances during the year 1875, with the character of the assets and these two men left there, and no complaint made ; but, still, Mr. Ellis told Reid to keep watch of the bank. I refer to pages 457 and 458 of the Senate testimony. When the report of January 1, 1876, came to the department, it was sent back for correction. 'There was something about it that did not look right. Reid then goes there at Ellis' suggestion, January 19, 1876. You will find that on page 162. The indications are as Reid reports, that there is a deficiency of something like \$5,000, but there is some uncertainty about it. The report is corrected by the bank and is again sent up to the department, February twenty-fifth. That will be found on page 484. The department is still watching the bank, and a list of its stocks is sent down to Reid in New York, and he is required to get the true values and report to the department. He reports to the department the value of these stocks, page 460, along in March. Then March seventh Mr. Reid is required to make a thorough examination of this bank. Reid makes an examination March fourteenth. He sends the report of his examination back to the department on March fifteenth. You will perceive that each one of these steps is being taken as fast as possible ; but my friend says " nothing was being done all this time." Each step follows the other regularly and promptly. The report on the stocks follows the report of the bank, and the examination follows that. The result of a partial examination is returned in March, 1875 ; Reid sets them to getting up a balance sheet in regard to the deposit account ; he has sus-



picious in regard to that, and not until May twenty-sixth does he find out the true condition of that. Thus we get to May twenty-sixth. From January thirty-first, almost every week, right along, some step is being taken either by the department at the Albany end of the route, or by Mr. Reid at the New York end, doing something in regard to the investigation of this bank, and not until May twenty-sixth does the final letter come to the department from Mr. Reid. Three days after that, on June first, the bank is handed over to the Attorney-General by the department. Thus, you find the action of the department in this case taken from week to week, and from time to time, was prompt and decisive. These are facts left out of my friend's brief which he has had printed for our assistance. After it is handed over to the Attorney-General the recommendation remains for a month and a half in the Attorney-General's office before a receiver is appointed, the receiver not being appointed until July 14, 1876.

And now I submit in regard to the Mechanics and Traders' Savings Bank whether the action of the department has not been careful and watchful, and such as would have been adopted by a person occupying a position which the superintendent occupied, situated as he was in the midst of such surroundings in connection with a bank possessed of this kind and amount of assets. And let me call your attention for a moment to the opportunities my friends have enjoyed for making out a good case here if there had been any thing to make one out of.

One of my distinguished friends has been engaged in the investigation from the time the Third Avenue Savings Bank was first considered in the city of New York before the committee — something like six months. Another of my distinguished friends has been engaged in the department of the superintendent going down through the letters, records and documents in the department. He has been aided by suggestions from a clerk in that department, as to how to shape his subpoena, and otherwise, so as to get private documents. He has had no stone put in his way, but has been authorized to rake down through every letter, official or unofficial, every memorandum, public or private, every document, every thing there was in the department, without let or hindrance, and he comes here after that examination and brings all or any of them as he sees fit; and some few little specks — little errors of judgment, perhaps — are all the things that he finds with which to stain Mr. Ellis' official career — nothing more. The fight from the start has been one of technicalities — a constant hunting for mice, and with all the assistance furnished by the respondent's having been once put on trial and compelled to go into his defense and show his hand, with all the light that has given them, our friends have been obliged to perpetually shift positions, to

keep dodging behind some stump or tree like Indians in a western slashing. We find them carrying on this technical warfare all the way down through this investigation here for six weeks, trying to find out something, some little element of dirt, some little speck, either of mistake in judgment on the part of the superintendent, or of some of his clerks, or of some of his employees. The whole four years of his official life has been raked over as with a fine-tooth comb, and it would be strange, indeed, if occasionally some little particles of dust, which settle on the head of any man during four years, could not be scraped up here against him. But still we find this course pursued, and we are, therefore, compelled to take up these banks, one by one, even though we exhaust your patience by so doing. And now we come to The Abingdon Square Savings Bank.

We find, in 1873, in December, Reid made an examination of this bank and reported the assets \$160,000 — considerably smaller than the amount of assets contained in some of the other banks; but still it is something of a bank, with a deficiency of \$1,500. The trustees signed an agreement to make up this deficiency; the trustees doing the same in this bank as is frequently done in young and small banks. They bound themselves to cover this little deficiency; and this having been done and reported to the superintendent, the bank was allowed to go on. It appears that the trustees signed that agreement on page 555, but you will not find any allusion to that in my friend's brief.

We come to the January, 1874, report, and we find a surplus of \$3,000; July, 1874, a surplus of \$3,700. But my friend says, here are deposits in the Loaners' Bank; and for a quarter of a day the examination was prolonged to show there was \$25,000, \$35,000 and \$30,000 deposited by this bank in the Loaners' Bank. Before we got through with the investigation, it appeared that every dollar of this whole amount of money had been drawn out from the Loaners' Bank before the Loaners' Bank failed, with the exception of twenty-nine dollars and some cents. The depositors got this money all back. What was the use, then, of endeavoring to fasten a pin-hook on this item with a view of possibly catching the superintendent as he slid along down the trial and removing him from office for this?

In the report of January, 1875, we find a surplus of \$3,500. Reid made an examination in November, 1875, and found a surplus of assets of \$4,400. Thus, from the examination in 1873, when there is a little deficiency of \$1,500, the reports that come to the Superintendent of the Banking Department right along till January, 1875, show a surplus. Not only that; but, in the latter part of 1874, Reid was passing in and out of this bank frequently, down to November, 1875. So far as any report or complaint or communication from any source comes to the department, the superintendent

has no reason to be suspicious of this bank. Reid examined it in November, 1875, and he found a surplus of assets of \$4,400.

Thus, passing along from report to examination and from examination to report, we find a surplus during all this time. Reid complained in this examination in November, 1875, that there has been an exchange of real estate which, in his opinion, was not warranted by law ; but the exchange was made prior to the time of his discovery. My friend on the other side says, he could have discovered it. Of course, if he had known they were exchanging that real estate on a specific day, he might have had an examiner down there to have seen them make the exchange, and he would have known it ; but, while he was having his examiner there, a dozen other bank men, in other banks throughout the State, might have been running away with all the assets they had.

If you hold the superintendent to the proposition that he has got to know every day and every hour precisely what the board of trustees is doing, precisely what every member of the board of trustees is doing, precisely what every cashier and clerk is doing, then you are asking of him not simply the powers which are given to an ordinary man, you are asking that he shall be possessed of the powers of omniscience ; and then you require him to have foreknowledge. Then you require not that he must simply know what is going on, but what is to be going on in all these four hundred institutions throughout the State. You are asking, also, that he shall know what is going to happen to the real estate of all these four hundred institutions ; to know what is going to happen to these stocks and bonds, whether they are going up or down. I submit that you are asking too much. This real estate was exchanged before the superintendent came in, and the depositors had derived the benefit, and the report shows it. The examination in November, 1875, showed a surplus of \$4,000, and the report of 1876 showed a surplus of \$7,000. After January, 1876, something evidently again turned the attention of the department to this bank, and on July 6, 1875, Mr. Reid goes to New York to see whether the officers have got up their July report. The department, it is claimed, is not doing any thing during all this time, and is not watching any of these banks ; but Reid goes there, and drops in upon them July 6, 1876, and he writes a letter to the department which will be found on pages 576 and 577. He thinks, from the looks of that report, yet incomplete, there will be a deficiency. He has not made a full examination. It is merely an instance of his dropping in upon the bank, and finding enough to make him mistrust a deficiency. July nineteenth he drops in again. This, Senators will recollect, is the case where the letter of July sixth was sent out to Mr. Ellis, at Rochester. Mr. Ellis comes back. When he comes back, the letter of

July nineteenth is called to his attention. Mr. Lamb, my friend asserted, swore positively that he handed that letter to Mr. Ellis, and that Mr. Ellis did not make one word of reply. I submit that he misstated that evidence, Mr. Lamb says he handed, as Mr. Ellis came along going to his room, the letter of July nineteenth, to him—but did not remember of his making any reply. Mr. Ellis' recollection is that he said to him, as he looked over the letter, "attend to it," and passed on to his room. How common, how frequently is it the case with any of us that a matter of that kind is left, as it was left in this instance and in that way. Mr. Ellis is just getting ready to go on his summer vacation. He comes in—he and his deputy being in full accord, the deputy having the same powers to deal with that bank that he has, and relying justly on the judgment of his deputy and on his discretion, he tells him to "attend to it," keep watch of it, and passes on, making his preparations for his departure. But, my friend says, on the receipt of that letter of July nineteenth, Mr. Lamb, reported that bank to the Attorney-General. My friend misstates that evidence also. It was not on that letter of July nineteenth. It was on a subsequent letter, that of July twenty-sixth, that Lamb reported the bank to the Attorney-General. But my friend alludes to the letter of July nineteenth, as mentioning the fact that in January first, preceding, the trustees had put in bogus checks. It makes a great deal of difference, Senators, whether you consider this evidence in regard to these bogus checks as of the date when Mr. Ellis, first knew of it, or as of the date when it first occurred. It seems from this letter of Reid's that this bogus check business was in January preceding; but neither Mr. Ellis nor Mr. Reid, nor anybody in the department knew any thing about these bogus checks until this letter of July nineteenth was received—nearly six months afterwards. But Mr. Lamb says he might have known it if he had been there. Certainly, if they had not concealed it from him. There are instances of transactions going on in savings banks where even the trustees, the officers, the secretary, the treasurer, all the officers connected with it, do not know what is being carried on under their very eyes. Possibly you will ask of the superintendent — having only some 400 institutions to watch in the State, having only some 100,000 and odd clerks and trustees and employees in the various banks, loan and guaranty, and indemnity and trust companies — possibly you will ask of the superintendent that he shall know every thing that is going on, every thing that is being done by every one of these 100,000 men, in all these institutions, scattered all over the State. If you ask it then he cannot comply with your request. You are asking an impossibility. I do not think you will ask it. Not until July nineteenth, until the receipt of this letter of Reid's did the department have any knowledge

of the facts stated in it, or of the false return. I turn to page 484 of the Senate testimony as bearing upon this point, also the committee testimony, pages 306 and 577. Now, I stated that my friend asserted that Mr. Lamb reported this bank to the Attorney-General July 29, 1876. He says he reported it to the Attorney-General in this letter of July nineteenth. If you will turn to page 581 you will find that he reported the bank to the Attorney-General in the letter of July twenty-sixth — this letter came July twenty-seventh, and then he reported to the Attorney-General. From the time of the receipt of the letter of July sixth, Mr. Lamb was suspicious, the department was suspicious; the letter of July nineteenth came, and their suspicions were quickened, and Reid had been told to keep watch of this bank; and July twenty-sixth he writes again — three letters during the month of July. Acting on his suspicions alone, Mr. Reid goes repeatedly into the bank, and keeps close watch of its transactions; and when the letter of July twenty-sixth came, then Lamb reports the bank to the Attorney-General.

After it is reported to the Attorney-General, the Attorney of the bank comes up and has an interview with Mr. Lamb, Ellis being off on his vacation. Mr. Reid examines again August fifth, and brings a report to the department; and Mr. Lamb then, while the bank is in the hands of the Attorney-General, favors an extension of time in connection with it. The Attorney-General extends the time on the suggestion of Mr. Lamb. And still it is claimed, that the Superintendent of the Banking Department has no right, no power, no discretion, no judgment to exercise, in regard to extending the time.

There has been some criticism attempted in regard to the mortgages held by this bank. Following the evidence down through, you will find, I think, without exception — there may be one exception in this case — that the depositors have got the benefit of all the money on these mortgages; Lamb swears that, not until these letters of July — during which month this bank was handed over to the Attorney-General — not until then had there been any thing in the department, either in the form of a letter, suspicion, suggestion or complaint, but that this bank was going on to succeed, and had it not been for the fact, that it was deemed necessary to hand over the Third Avenue Savings Bank into the hands of a receiver, thus awakening a distrust among the depositors of all the banks, had it not been necessary to have done that, this bank would have been successful and prosperous to-day.

Let me now pass down to “The Trades’ Savings Bank.”

In going over the history of this bank and the dealings of the department with it, if you will follow me from point to point, as I go along down through, you will find that the department is keeping

watch of this bank, also exercising that right of judgment which the superintendent had, or which he had the right to believe he had, under the action of his predecessor, under the language of the law, and under the action of the Legislature itself.

The Trades' Savings Bank has been brought up here as one toward which no leniency should have been exercised. It turns out that when Mr. Ellis went into the Banking Department in the spring of 1873, this Trades' Savings Bank had, how much do you think, due depositors? The enormous sum of \$1,100. That is all, as appears on page 139 of the Senate testimony. November, 1873, Reid makes a report of an examination of that bank. That was not filed until November twenty-sixth. The dates of the filing of these reports sometimes becomes important, because, in the line of investigation which my friend pursued, he took care to prove the time when the examination was made rather than the time when the report of such examination was filed in the department. The examination of November 9, 1873, was filed the twenty-sixth. There was then a surplus of assets of \$2,200, and the income was about even.

Here is the letter which Reid, on that examination, sends to the superintendent, and the superintendent acts under this letter:

“Hon. D. C. ELLIS, *Superintendent Bank Dep't*:

SIR.—The undersigned, appointed to examine into the condition, working, etc., of the Trades' Savings Bank of New York, reports:

Last spring the trustees concluded to wind up the affairs of this bank and had paid the depositors down to about \$1,100, when some of them resigned, and were succeeded by the present officers, who have, by energy and perseverance, raised the deposits to nearly \$29,000.

The president, who is said to own considerable property, says he is determined to make the bank a success. The promise of seven per cent interest to depositors; the issue of coupon certificates of deposit and all other extraordinary measures are to be abandoned, and every thing in future to be done upon strict business principles.

From the statement of assets it will be seen that there is an apparent surplus of \$2,220, and the trustees will pay any deficiency there may be in meeting the expenses.

Respectfully submitted,

GEO. W. REID.

Examined December ninth.”

This letter is certainly encouraging for a small bank just starting off; but not satisfied with that examination of November 9, 1873, although there is a surplus, if you will refer to page 102, you will find

Reid drops in again December 15, 1873. You will not find this on my friend's digest of testimony. Reid steps in again the next month and makes another looking over. Then comes the January report showing a surplus of \$4,300. February 5, 1874, Reid has another investigation, and writes another letter to the department; and on that letter my friend says "nothing whatever was done." At page 173 of the Senate testimony, if he refers to it, he will find Mr. Ellis reported the bank to the Attorney-General the very next day. That letter of February fifth, which has been heralded here as being one of the important links of testimony which is to bind this respondent, that letter which speaks of there being a warfare among the trustees of the bank, and which contains account of the hard and disagreeable state of affairs there, that letter was brought out here and read with great emphasis, and then the Senate was gravely told the department "remained absolutely quiet and did nothing whatever."

By turning to the page to which I will refer you will find the very day that that terrible letter came to the department Mr. Ellis reported the bank to the Attorney-General. No action was taken? The Attorney-General brings no action. Why? The testimony shows you why. Within a day after that you will find Mr. Ellis going to New York to investigate in regard to this state of affairs; you will find him going into the bank and saying to these gentlemen, and I refer you to the testimony on page 882, "these proceedings must not go on; these officers (mentioning the president and other persons connected with the bank) must go out and other gentlemen must be instated in their places; new men must be put in it and have the management of it;" and then after those changes are made the bank is permitted to go on. He does not simply rest upon his investigation alone. He puts the officers themselves under oath, swears them there as to the truth of the statements they make. As my associate properly suggests, the complaint in this case as appearing in this letter of Mr. Reid to Mr. Ellis, was not in regard to the insolvency of the bank, but it was in regard to the management, the way in which the bank was run, the quarrelling among the trustees, with this policeman in there. Oh, the superintendent does nothing in connection with this bank! Why, even he takes the responsibility of passing it over to the Attorney-General, before going down to see whether he can effectuate a change in the management, and he succeeds in doing it.

My friend also told you in that report and in Schedule G, there was shown an increased value of the fixtures from \$4,000 to \$7,000. Is that fair treatment of this Senate in reading this evidence? When the fixtures are put in at \$7,000, they are specified as not simply fixtures, but "value of the lease, of safe and fixtures," and in the other case, the lease is put in as a separate item.

Then comes the report of January 1, 1875, and here you find that the assets which on the 1st of January, 1873, were \$1,100, have increased to \$160,000, under the management of these new men, whom the superintendent had put in. Certainly, he had the right to assume, that these gentlemen were proceeding at least with a reasonable prospect of success.

But, in October, 1875, Mr. Reid is given a commission again to examine the bank. You do not find this in the brief and printed digest of my friend. Mr. Reid examines again November 12, 1875, and here comes in once more the importance of getting the correct date of filing.

This report is not filed until December 2, 1875, as appears on page 149. There then appears to be a deficiency of assets of \$6,538.29, and of income of \$1,425.75. Immediately after this, Mr. Ellis goes to New York and has a talk with the secretary who promises that he or they would make it good. But, in order to have it done, in order to be sure that it is done, on December 25th, he writes a letter to the Trades' Savings Bank telling them unless they make that up the bank shall go into the hands of a receiver. He does not hear from them by December 30th, and he telegraphs to them and an answer comes December 31st that they have made it up. The bank report of January 1, 1876, comes in in February, and it is shown to have been made up. There is a surplus reported of \$1,400, and still the department is suspicious. On January 4th, Mr. Reid is in to see this bank, watching it closely during this time. Not yet satisfied, he drops in again January 13th, makes another examination of the bank, and finds a surplus of \$2,400. He reports that surplus to the superintendent. He is still in doubt in regard to his examination being exact and correct. He drops in again, January 19th, and writes another letter to the department in which he says that he is still in doubt, very much in doubt as to whether that report is correct, but he is not able, from the way in which they keep their books, to ascertain precisely where the fault is, and he keeps dropping in from time to time to find out in regard to it. He complains in regard to the Beach street property that he did not find the title. It subsequently turns out that that title is all right. Mr. Ellis sees him, January 19th, and after hearing what he has to say, tells him to keep close watch of the bank, and he does so. When the July report comes in it needs correction. The superintendent sends it back for correction, and when it comes to the department again a commission is issued to examine the bank, dated August 3, 1876. August 9, 1876, it is examined. Prior to that time Mr. Ellis swears in his testimony he did not deem it "unsafe or "inexpedient" for this bank to continue. It was not until that proof positive — Reid's report of August — was brought the superintendent that he could act.



The superintendent could not act upon suspicion, as appears in the testimony. The Attorney-General could not put the bank into the hands of a receiver on suspicion. It was necessary absolutely, that beyond suspicion they should have facts upon which they could put their fingers, before they could pass it into the hands of a receiver, and not until August did they feel authorized to take that action. On August they did feel authorized to take that action, and on August 14 it was reported to the Attorney-General.

But my friend says, "the department did nothing." Here were three separate examinations of this bank made inside of nine months. But it may be claimed that the superintendent ought to have put this bank into the hands of a receiver on the first examination. That had not been the policy of the department. It was not deemed wise, in the exercise of that judgment, that discretion which the superintendent had under this act, which he had a right to believe that he had. The policy was one of leniency to carry along these banks, if by any possibility they could be carried along to a harbor of safety. It is not neglect — when the department is keeping watch of a bank, dropping in almost daily, examining it three times within nine months. It may be a mistake of judgment, but it is doing the best thing possible to keep the bank along, if by any possibility it may be saved.

This bank was delivered to the Attorney-General in August, chiefly on account of its mortgages. It turned out, however, that these mortgages — the Mulvaney and Lesley mortgages — were recorded, and it turned out, also, that they were good and valid, and that the property was worth, as appears by the testimony of Mr. White, \$25,000, and the depositors have got the full benefit of them. After it was handed over to the Attorney-General, the Attorney-General carries it along for months, with the hope that the trustees might put the bank on a safe basis. Thus, we find, that in the case of the Trades' Savings Bank, as in the case of these others, the superintendent is exercising his best judgment, with the idea of carrying it along into a place of safety.

Senator GERARD — Mr. President, I move that we take a recess for ten minutes.

Senator STARBUCK — Mr. President, we have listened to the argument of the counsel for the respondent, and all who are accustomed to deliver such arguments, know how they exhaust a man. I think we ought not to ask him to continue for another hour.

Mr. CHAPMAN — Mr. President, I certainly appreciate from the bottom of my heart, the kind suggestions made from one side of the Senate and the other, but I feel as though I had rather conclude what I have to say in this case, if I can, before you adjourn to-day, and by two o'clock. I shall deal with the Third Avenue Savings Bank, prob-

ably in a very general way ; and I think, on the whole, I will be inclined, with a rest perhaps of five or ten minutes, to go on with what I have to say.

The Senate hereupon took a recess for fifteen minutes.

Thanking the Senate most heartily for the indulgence which they have been so kind as to extend to me, I will endeavor not to abuse their patience, but for a very short time longer, and that only in the consideration of the Third Avenue Savings Bank. And, perhaps, it is as well, in connection with that bank as any, that I should call the attention of the Senate, to one of the very first acts which the superintendent performed on taking his seat as superintendent in February, 1873. Of course he would be required to select an examiner. Now, it was claimed for a time here, that the examiner of the Banking Department, ought to know every thing. It was not claimed perhaps in the broad way in which I state it ; and yet the line of questions put forward here from around this circle, would inevitably lead to the conclusion that, by some Senators, it is expected that an examiner should be infallible.

Now, how many examiners do you suppose, Senators, you could find competent to fill the bill under these requirements ? Without going into it particularly, I will simply say that it is impossible to find a perfect examiner until you find a perfect man. He should be possessed, however, of nearly, if not quite all the qualifications which the Superintendent of the Banking Department should have ; and I will presently call your attention to what those requirements would seem to be, as indicated by questions around this circle.

The first thing the superintendent did was to look around for an examiner, and it was important for him, as a new superintendent, to, so far as possible, find some man who had had experience, provided he was competent in other respects. After making all necessary inquiries, he selected one, irrespective of party, one who had been selected by his predecessor, and had had a year or two of experience, Mr. George W. Reid. Immediately after his examination, he writes this letter to him :

“ NEW YORK, *March 26, 1873.*

GEO. W. REID, Esq.:

I send you herewith commissions to examine the National Savings Institution and the Mechanics' Savings Bank of Brooklyn. I have not yet perfected my arrangement for a full force to examine the larger banks, but probably shall by the time you have finished some of the smaller institutions, which do not require more than one to make an examination. I will write you at greater length shortly or will see you in person. You will please bear in mind the object of

this examination, namely, to show the true character and condition of each bank, either large or small, old or new, and make your examination rigidly and so searching as may be necessary to find out and present the material facts for the protection of the community doing business with them, without partiality or bias. Please acknowledge receipt.

Yours, truly,

D. C. ELLIS, *Supt.*"

There is the general letter of instruction to the examiner given by the superintendent, certainly indicating on his part an appreciation of what is most desirable in an examiner and what he requires an examiner to do. Now, in obedience to and in accordance with that letter, we find right along after this, so soon as April fourteenth, the very next month, that an examination is ordered in the case of the Third Avenue Saving Bank. This bank was originally a bank having some \$6,000,000 of assets. Only the year before, a little over, perhaps there had been an exhaustive examination of this bank going on for five months. Gentlemen seem to think it does not amount to any thing to examine a bank. But for five months two experts had been at work going down through this bank, and after that exhaustive examination the matter went into court, and, as reported to Mr. Ellis, when he took the superintendency, the court had refused to put the bank into the hands of a receiver. But there had been so much commotion over this bank that Mr. Ellis does what? Does he send one man alone and rely upon him? Having full faith in his predecessor, he naturally would have been inclined to let the examination of the year before answer for a year or two; but, in the excess of his caution, we find him selecting three men to examine the Third Avenue Savings Bank. He selects the old examiner, Reid, who has had long experience as an examiner; he selects a lawyer, Mr. Aldrich, so that, in case it should become necessary to verify titles, or answer legal questions he can be called upon; he selects a third man, Mr. Vrooman, and sends these three men following the wake of his predecessor, to find out whether there had been any deception practiced upon him, and to ascertain the whole truth about the bank's condition. These three men make an examination—are there quite a while—and they find in the bank, a bank possessed at this time of \$1,500,000 assets, they find a deficiency of \$5,700; one-third of one per cent on the assets only; and, in order to make that still less alarming, they find and report to him a surplus of income of \$3,700. But, as if that was not quite sufficient to warrant the superintendent in refraining from hostile action, these gentlemen, with the report which they send showing this one-third of one per cent only, deficiency in

assets, and a surplus of income of nearly that whole amount, sent this encouraging letter. I read only the portions of it that bear upon the point.

“The courage and perseverance with which the trustees stood up under the pressure of a run for forty-five days, in which the depositors drew out of that bank \$100,000 a day, and still the trustees stood up there and met their requirements from day to day and almost month after month.”

Senator SPRAGUE—What date was that ?

Mr. CHAPMAN—May 17, 1873, pages 6, and 7, of the Senate testimony.

We find these trustees thus standing up and battling almost against fate. The then Superintendent of the Banking Department stands by them and assists them. Certainly, the new superintendent coming into his place would be charitable. It would have been wrong I submit, if after still further examination he had not attempted at least to have carried out his predecessor's line of policy, provided, in his judgment, it would succeed; surely in this letter there was sufficient to have allayed the suspicions of any one.

As they say: “The courage, and perseverance with which the trustees stood up under this pressure and met all demands, and the refusal of the Supreme Court to appoint a receiver appears to have convinced the remaining depositors that their funds were safe, and since that time the deposits have been steadily increasing.” That is one element tending to indicate the bank was bound to succeed. But to read on: “A large number of the old board of trustees having resigned, the vacancies were filled with gentlemen of wealth and character, who appear determined to sustain the institution, and there is every reason to hope that it will be successful.”

There is another element that would tend to indicate success on the part of the bank. Mr. Lamb in his testimony here, you will recollect, mentions that as one of the most important elements “the character of the men,” who are managing an institution of this kind, and it is one of the most important elements. Mr. Ellis, knowing the character of these men would have the right to think they would carry the bank through. “Their personal obligations for the deficiency of last year is already on file with the department.” Here is another element that would tend to indicate safety. These new men were not only bound to save their own character and reputation, but they put in their personal bonds to the extent of \$100,000. Is there any body around this circle who thinks that at the time these men signed those bonds, they supposed there was any legal quibble by which they could get out from paying? But I read farther, “since our examination, the troubles in Louisiana have rendered their State

bonds unsalable, and if continued may cause a heavy loss to the bank. George W. Reid, May 17, 1873." Senators familiar with political movements in the State of Louisiana, during those years, 1873, 1874 and 1875, will recollect that no man in the State of Louisiana, not to say in the State of New York, no man in the Banking Department, unless possessed of omniscience and foreknowledge could have known what was to come out of those troubles in that State. He could only deal with those things most charitably; and, in regard to the Louisiana levee bonds, you will find them quoted to-day at nearly fifty per cent in spite of all these troubles. I submit whether after the superintendent had obtained this knowledge in regard to this Third Avenue Savings Bank, after he saw that these new trustees had gone in there, after he found they were bound to carry this bank, on, after they had fought one fight in the way they had, and had come out successful, after the deposits had begun to increase, after these men had put in \$115,000, I submit whether he was not justified in putting faith in its prosperity. Of these bonds \$100,000 was put in at first, and not until the next year did they go on and complete the agreement which was then made to put in the additional \$15,000. When the president, Mr. Green — or whoever it was, connected with the bank, came home from Europe, a year after the \$100,000 was put in, he indicates honesty of intention on the part of the trustees, by putting his name down for another \$15,000. Thus at the end of the year the superintendent finds additional indications on the part of these men, that they "mean business," to use the expression of my learned friend on the other side. They do mean business at this time, evidently, and, if it had not been for the panic of 1873, depreciating values everywhere, this bank, I venture to say, would have gone on to solvency and to prosperity and success. The Banking Department, I do not suppose, is responsible for the panic of 1873. Reid's letter breathes confidence, the action of Mr. Howell had been in the direction of a lenient policy; but, not only that in looking over the report, Ellis finds that Mr. Howell had said to the Legislature: "Gentlemen, I have taken these personal bonds not only in this case of the Third Avenue Savings Bank, but in the case of the People's Savings Bank, I took \$55,000 of them, and in case of other banks I have taken other bonds," I have exercised that discretion; I have granted this leniency to this bank and to others. And Mr. Ellis finding that Mr. Howell had reported all these facts to the Legislature, and the Legislature had not disapproved of it, Mr. Ellis had a right to assume that he could follow on in the same line. And when he finds that Mr. Howell had told the Legislature that the Supreme Court refused to appoint a receiver upon these very assets, thus raising the very point made here in regard to that Tarry-

town property and all this other property, he had the right to assume, I submit, that the bank had a right to hold them, and that these men would carry this bank into safety.

But, my friends have succeeded in digging out Mr. Smith from the Banking Department, and Mr. Smith comes here with what he claims was an analysis which he showed to the superintendent after the report of July, 1873, made up, not as of the date when the report purports to be made up by the bank, July first, but made up as of September, perhaps the very last of September, when the downward indications of the market were reflected by the trembling which preceded the panic. But is there any Senator around this circle who will say, in his own mind, in the light of the evidence, that this man Smith, made up that statement and showed it to Mr. Ellis, along in September, 1873? How does the evidence stand? Mr. Smith says he did show it to him. Mr. Ellis said, the first he ever saw of that paper, was when it was produced here upon the stand. Is it possible, Senators—looking at it as reasonable men—that that man Smith, whom you have seen here upon the stand, after making up this report, and being to the trouble of getting three different deficiencies, if he had made it in September, 1873, would not have shown it to the deputy, would not have shown it to some other clerk in the department? Would he not have been as proud of it as a hen with her first chicken? Would he not have handed it to this, that and the other one; and especially, after the bank was found to be insolvent, on the examination in March, 1875, would he not then have brought it out from his secret drawer, and handed it to Mr. Lamb, and said: “I told you so;” showing it to the other clerks and say to them “I told you so, here is what I handed Mr. Ellis, in September, 1873?” Not a thing of that kind. On the other hand, Mr. Lamb says, the first thing he ever saw or heard of that paper, was after he was subpoenaed to come here and testify. He says, that after the examination of March, 1875, Smith claimed that he had told Mr. Ellis, that the bank was not solvent in 1873. If he had told him that, would he not have brought out this paper, if he had had it? Did any body see that paper until it was produced here upon trial? And *how* does it come here? On Mr. Smith’s own invitation. He tells the attorney for the other side who is drawing up the subpoenas to put into his subpoenas the word “memoranda,” and that brings the paper before us.

But this man Smith had been examined before this by my associate, and on that examination, he swore that he did not advise with the counsel; he did not tell him any thing about the paper; he did not convey to him any idea of any thing of that kind. And still Mr. Werner comes here upon the stand, and testifies to a conversation that he heard Smith have with Mr. Swaney, a clerk in the Attorney.

General's office, only a day or two ago, in which Smith said to Mr. Swaney that he told Mr. Taylor to put in the word "memoranda," in order to get that paper here. Are you, Senators, to take the testimony of a man who has been thus careless in his manner of testifying to use the mildest expression. Let me call your attention to a sentence or two of his testimony on two separate occasions. I refer to pages 822 and 823 : "Q. Did you indicate, before the subpoena was served upon you to either of the counsel upon the other side, that you had this private memoranda? A. I do not know that I did sir. \* \* \*

Q. Do you mean, Mr. Smith, that the first the counsel on the other side had any idea that you had such a paper, was when you voluntarily produced it as a witness? A. I do not know of any thing different from that.

Q. So far as you know, that was the first knowledge they had of it? A. Yes, sir."

That would seem to have been sufficiently critical to have directed his attention to what he had done. After dinner he finds out there is a little materiality to this evidence, and he desires to be recalled, so as to make a correction.

On page 874 he is examined by Mr. Tracy as follows :

"Q. Do you desire to make some modification of the testimony given by you this morning? A. Yes, sir.

Q. Do it? A. I was asked by the counsel for the accused, in substance, if I had informed the counsel for the State whether I had such a memorandum—whether there was in existence such an analysis as I was inquired about this morning of the July report of the Third Avenue Savings Bank; I did inform him there was such a memorandum or analysis; that he asked me to let him see it, and I refused; I remembered the circumstance, after I left the stand, that he asked me to let him see it, and I remembered the refusal.

Q. That is the correction you want to make? A. Yes, sir.

By Mr. McGUIRE:

Q. He did not tell you how he learned you had such an analysis? A. I told him that I had such an analysis."

Now, is it possible that that man Smith should have forgotten, on his first examination by my associate, the conversation that had occurred between him and Mr. Taylor in regard to that analysis? Is that possible when it transpires that he told Mr. Taylor himself what word to put into his subpoena in order to reach that analysis? I submit Senators, that the testimony of the witness, thus standing when he claims that he had such a paper, and in connection with the fact that, if he had had such a paper, he would have shown it to every man around the

office, I submit that that witness cannot impeach the testimony of Mr. Ellis, standing here, as he does unimpeached and unimpeachable — not even in spite of the suggestion of my friend — by the testimony of Mr. Cisco. Take the whole scope of Mr. Cisco's testimony — take it in connection with Mr. Morrison's, with Mr. Macy's, and Mr. Stewart's, and there is no contradiction between them. Why, tell me what Ellis was down there to see Mr. Cisco for if it was not to find out what the effect of closing this bank would be upon the market. There is no substantial contradiction between these two men, and that is the only case of contradiction of Ellis by witness to which my learned friend has alluded, or which it is even claimed to exist. He stands here unimpeached and unimpeachable, and every man around this circle who knows De Witt C. Ellis, knows that if there be an eminently truthful man he is one — a man who would not commit perjury or swear to a falsehood to save his life, much less to save the position of Superintendent of the Banking Department, which he would not hold after this trial is through with, for twenty-four hours. Every person here knows that the statements he makes here are to be believed, and none the less because of any evidence from this man Smith. Mr. Ellis is entitled to and will receive credit upon this question, I know.

We find, in connection with the Third Avenue Savings Bank, that every report that comes to the department from the bank, after Mr. Ellis was appointed, shows an excess of assets. If there had been a deficiency at any time, it would have attracted attention, but there was nothing suspicious down to the January report of 1875. Much has been said about the real estate having been increased in value. There had not in fact, been one solitary dollar of increase either in the Tarrytown property, or in any other of those houses and lots, from the time of the examination in April 1873, until the report of January 1, 1875, which did not come to Mr. Ellis' attention until after Mr. Reid's examination in March, 1875. There are differences in the figures returned, it is true, but that is fully explained. They returned as real estate the nine houses and lots in the city of New York, on which there are mortgages, and it appears that during the year some portion of the amount of these mortgages had been paid, which of course, left a greater value in real estate, which, the evidence shows, accounts for all these differences. Making the correction due by reason of these payments upon these mortgages, and you will find, as I have said, that there has not been one dollar added until this report of January 1, 1875.

And now a word as to this report of January. It did not come to the department until along in February, and then it comes in with the returns from all the banks, a vast mass of papers and documents, some 7,000 sheets and more, all dumped into the department together,



between the middle of January and February, for tabulation, classification, analysis and arrangement. Coming in thus, with all these returns, it naturally would not come to the superintendent's attention, and did not come to his attention, until Mr. Reid's examination in March, 1875. And now we come to the point over which the most has been said, and upon which, and concerning which, my friend argued something like a day; and that is, the inaction from the time of the receipt of this report down to the September following — mere delay — that is all.

But it has been suggested here in the form of questions rather than in the nature of a statement, that Mr. Ellis ought to have issued an order under the prior provision of the statute, to stop this bank from going on with its business, that he ought to have issued an order to prevent them from paying out money to, and taking money from, depositors. He did not assume to act under that branch of the statute, he proposed to act under another. If he had known that the bank was destined to go on until September, on the receipt of this report in March, possibly he might have issued an order, but he did not know that. On the other hand, he expected to close this bank up from week to week; but one excuse and another came up from time to time, which seemed to him to make it advisable to let the bank pass along. But suppose he had issued an order; what is the difference between issuing an order prohibiting a bank from receiving or paying out money and closing the bank? None whatever, because, if he had issued that order, the bank would have gone into the hands of a receiver at the end of sixty days, and on the motion of the depositor. At the end of sixty days, depositors would have gone there with their bank-books and demanded the money, and the bank would have then been compelled to pay depositors as fast as they came; and the next day, with this run precipitated upon it the bank would have gone into the hands of a receiver. But it was not the superintendent's idea at the time this report of March came to him, that there would be this delay. He did not deem it necessary to issue this order. He was acting not under that clause, but under this provision of the statute: "Whenever it shall appear to him that it is unsafe or inexpedient" he shall report the fact to the Attorney-General. He admits that it so appeared to him when Reid's report came to him, and now, what is his excuse for not acting? I submit, Senators, that his excuse was sufficient for not acting under these circumstances, situated as he was in the midst of the surroundings that then environed him. I submit that he was not only exercising the wisest judgment, but the greatest zeal in taking the course that he took. I mean all that I say when I say that I believe it was a broad, manly and wise course for the superintendent to have taken, believing, as he did, that he had the

right to exercise his judgment and move in the direction which seemed to him to be safe. He is not, I insist, the protector and the guardian of 1,000 depositors only in one bank—he has under his immediate supervision and control the whole of these 800,000 of depositors.

An illustration occurs to me Senators, as presenting my views in regard to this matter. A ship is coming in from the open sea, loaded with “widows and orphans,” if you please. It has come in sight of port. The ship takes fire. A half dozen of these widows and orphans are pushed into the sea. What is the captain to do? He may deem it “unsafe” to leave those half dozen people struggling in the waves, but what shall he do? Shall he stop the ship and go back and pick up the half dozen persons who have gone into the water? If he does this, when he gets them on board, by reason of the delay, not simply those persons are burned, who would have been drowned, but all the rest are destroyed. If he had not stopped to save the six, he could have saved all the rest. But he stopped for six and all were lost. Would that be the part of wisdom in the captain governing and controlling that ship? Evidently not. And so, I submit, that as a matter of wisdom, as a matter of statesmanship, when the Superintendent of the Banking Department, standing in his place, saw that, by proceeding rapidly he would not only destroy the few depositors in the bank, but that he might injure the many in all other banks, it was the time for him to exercise his discretion wisely, and to act in the interest of the many and not solely for the few.

Senators, let me bring up to your minds the panic of 1873, when all New York city and the whole country was trembling with fear; when the President of the United States and the Secretary of the Treasury were summoned from Washington to New York to consult with financial men as to what they could do to tide the community on to safety. Suppose at that time, under this arbitrary rule—that some persons seem to have the idea should obtain—suppose at that time the examiner had reported this bank to the Superintendent of the Banking Department—when all New York was as a powder-house, and it would have required but a single spark to have exploded every institution in the city, what would you have thought of the wisdom, the statesmanship, the discretion of the superintendent, if he had thrown this bank then into the hands of the Attorney-General and hurled that fire-brand out into the midst of this excitement? And still my learned friend on the other side argues that, under the law, the moment it is reported to the superintendent that there is a deficiency, no matter what the surroundings may be, no matter whether in the midst of panic or not, he must go on blindly, automatically and heedlessly and turn the bank over into the hands of a receiver. No, Senators, the superintendent has by law, has by precedent, and he ought to

have by both, the right to exercise his discretion and his judgment, provided he does so honestly and in full good faith.

But now what did he do? It seems to be assumed that he did nothing. The letter Reid sends to him is relied upon as indicating that it was a bad deficiency, and that he knew it was a bad deficiency, and my friends go on and undertake to prove how very bad it was. Great stress is put upon that letter of Reid's, accompanying the report, as showing that depositors would not get fifty cents on the dollar. Don't my friends understand that when they are proving that this bank has a large deficiency, they are proving our case? We say to them "Prove it just as bad as you can; so much the more excuse for our delay; so much more need of cautious action; so much more call for hesitation about precipitating the new element upon the community in this hour of excitement."

There was nothing in that letter and report, taken together, that would have warranted the superintendent in putting the bank into the hands of the Attorney-General at such a time. It was ultimately put into the hands of the Attorney-General on this letter and report. The only question is, what was his excuse for the delay? Circumstanced as he was, coming to the decision of this question, as I said awhile ago, with his construction of the law, and on his belief as to its being the right construction, he exercised that general discretion which was in accord with what he believed to be proper and right. What did he do when the report came in? He saw this bill, which had been pending in the Legislature, contained a new clause in regard to "merger." My ingenious friend attempts to draw out of the testimony the inference that he did not want to put the bank into the hands of the Attorney-General then, because his department would be investigated if he did so, before the passage of this bill. There is no testimony authorizing any such inference. It is not within the legitimate construction of any portion of the testimony. He alludes to Mr. Lamb's testimony. Mr. Lamb does not say Mr. Ellis conveyed any such idea to him either directly or indirectly. Not at all. Mr. Lamb only says he got the idea that it might interfere with the passage of the bill: not that Mr. Ellis said any thing of the kind, but that he gathered it himself. Mr. Ellis did not have any such idea, and he could not have such an idea from any thing in connection with it. Mr. Ellis finds in the bill this new doctrine—this doctrine of merger. He says: "Hard times for banks have come. Here are a number of small banks, and if I overthrow this bank now it will frighten depositors generally; they will withdraw deposits and then these small banks must fail. Can I save the depositors of the small banks in any way?" His judgment appears to have been correct as to the effect of affirmative action on this bank upon the small banks, because, immediately

after the Third Avenue Savings Bank was handed over to the Attorney-General, some half-dozen had to be reported, and failed within as many months.

The Senate hereupon adjourned to Thursday morning, August sixteenth, at ten A. M.

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SARATOGA SPRINGS, *August 16, 1877* — 10 A. M.

The Senate met pursuant to adjournment, a quorum being present.

Mr. CHAPMAN continued his argument as follows :

Mr. President and Senators, I shall this morning continue to abuse your patience but for a very brief space of time.

Yesterday I had selected for consideration the cases of those banks concerning which the worst possible could be said by the other side. I intended, so far as this Third Avenue Savings Bank is concerned, to only go over it in a general way, and to allude to some of the salient points. I shall follow the course intended, and shall close what I have to say this morning with the consideration of that bank and such suggestions as may occur to me in connection with it.

Yesterday I called your attention, you will remember, to the proceedings instituted by Mr. Ellis after he first took his position as superintendent, the letter which, immediately after his taking his seat, he had addressed to his examiners, the fact that in the case of this bank he selected three to examine all the circumstances connected with the previous examination by Howell, the action of the Supreme Court, and from all these facts and circumstances I assumed that he had the right — inasmuch as the bank reported a surplus from year to year in every report which it made to the department — to consider the bank in substantially the same condition as when he first took possession of the department; and when the Supreme Court had passed upon the bank, and upon its right to hold the assets which remained in the bank down to the time of the examination in 1875, assumed that he had a right to rely upon this decision of the Supreme Court in regard to these assets being properly held by the bank.

We then come down to the report of the examination in March, 1875, and then came up for consideration the causes of the delay on the part of the superintendent. Senators will bear in mind this proposition, that Mr. Ellis, so far as his delay during these six months is concerned, is not chargeable with neglect of duty. He is chargeable only, if chargeable at all, for error of judgment. It was not a case of neglect of duty. It was a case of error of judgment, if any

thing. In the testimony itself as given before the committee — and I think the same thing is indicated here — Mr. Ellis saw the emergency; he knew the condition of this bank; he knew this not only from the report, but from this letter of Mr. Reid, in which it is stated that the depositors probably will not get more than fifty cents on the dollar; he fully realized the position. Then the question addressed itself to his judgment as to what was the best thing for him to do under the circumstances. Looking over the ground, he finds a bill pending in the Legislature which contains this new clause in respect to the merging of banks. If that provision should pass, if the bill should go through the Legislature with that provision incorporated in it, then he sees a possible hope of saving the depositors in these dozen or more other banks by the aid of that clause. Time passes along, and on the seventeenth of May, something like a month or so, the bill has become a law. Then he goes to New York to consult with men in regard to the feasibility of bringing a consolidation about.

Now, at first blush, Senators, it may seem that this provision in regard to merger had no significance. If it had no significance, why did the legislature put it in the bill? There was a difference of opinion as to whether there was any merit in that merger clause or not; but the judgment of both houses of the Legislature commended it to the Governor, and the two branches of the government united in the proposition that there was in that merger clause something of merit. The superintendent had great confidence in the possibilities of doing something under it. But I noticed that my friend, in reading that merger clause of the law read that portion of it with emphasis, which says that the "Attorney-General can apply to the courts" for an order providing for their merger; as though he and not the superintendent was to act under it; but the Attorney-General cannot frame his complaint asking for the merging of one bank with another until he has some information from such bank as to whether they will accept of the merger or not, as to whether one bank will take in another or not; as to whether a certain strong bank will take in another weak bank or not; and it appears here in the testimony of Mr. Ellis — or would, if the testimony of Mr. Ellis was permitted to be here — and I submit, Senators, is it not strange, although a week nearly has passed away, the testimony of Mr. Ellis, in this case, is not placed upon our files.

The President here read a note from the stenographer stating that he had been prevented by indisposition from furnishing the testimony of Mr. Ellis as promptly as he would otherwise have done.

MR. CHAPMAN [continuing] — Mr. President, I merely alluded to this delay as being one of the significant things connected with this prose-

cution, and there have been several of them. Now, if my friend, the stenographer, has been sick, what would otherwise be culpable neglect in him, is excusable. It ceases to be a neglect of duty on his part.

This furnishes to us an illustration of the very proposition that I have been endeavoring again and again to impress upon the minds of Senators, that when there is a sufficient excuse for not doing a thing, then the party is not chargeable with neglect of duty for not doing it. It ceases to be a duty when there is a sufficient excuse, and I invoke the application of that same principle to the case of the superintendent. If he has a sufficient excuse for a non-performance of an act, sufficient to justify him in his own mind at the time, then he is not guilty of neglect of duty.

But, in regard to this merger clause, I say, or was saying, it appears in the evidence in this case, that Mr. Ellis, believing there is merit in that provision of merger, goes to the Attorney-General and consults him in regard to it; and the Attorney-General advises him to go to New York, and see what can be done among the bank men. But we are told that the Bank Superintendent has no business to be advising with anybody; and still the very same Senators, or the very same persons who think that he has not the right to seek advice, but should act on his own judgment, will excuse the action of the Attorney-General for the delays that occur in his department and under his administration, by saying that he advised with the Superintendent of the Bank Department who advised delay. The rule, if it works on one side, you surely must permit to be applied upon the other. But the superintendent, after consultation with the Attorney-General in regard to this merger clause, after the Legislature has come to the conclusion that there is some merit in that proposition of merger, goes to New York and consults with these bank men. Some of them are clearly in favor of it; some think it feasible; others do not, and he says to them: "think this matter over and I will come down again," he goes down again, but the matter has not yet come to a head, and the third time he goes to New York to see whether the thing can be effected. and that last trip, is to decide the question: If these banks cannot be saved under this merger clause, as he testifies to you, then he proposes to proceed to hand the bank over to the Attorney-General to be put into the hands of a receiver. Let me call your attention to the good effects of this merger clause, if the hopes of the Legislature, and the hopes of Mr. Ellis, in regard to the virtue of that provision had been realized. Let me call your attention to a few of the beneficent results that would have followed. I submit whether, in the light of subsequent events, it would not have been better for the savings banks depositors through-

out the State, whether it would not have been better for the savings bank interest, whether it would not have been better for financial institutions generally, if the stronger banks, the larger banks, had consented to have taken up these half dozen, or eight or ten smaller ones, and taken them and their depositors along out of the shoals of disaster into the harbor of safety. In that case, they could have carried these broken banks through, the banks would have been saved, the depositors would have been saved, and the larger banks would have been uninjured. Suppose, Senators, one of these banks, with \$20,000,000 assets, and a surplus of \$6,000,000 or \$7,000,000, had seen fit to have joined with some of the other larger banks, and picked up these banks of \$100,000 assets, with a small deficiency—all these smaller banks, and taken them along, would it not have been vastly better for the community, than to have permitted these disastrous failures? They could have done it without injuring themselves, and the savings bank interest would have been safe to-day, and they would not be liable to attacks from any quarter. There was merit in that proposition of merger.

Take the case, as a further illustration, of insurance companies. There have been failures of small insurance companies within the past few years, and the confidence of the public has been badly shattered in connection with them. Suppose, a few years ago, the larger insurance companies, realizing the rocks that were lying ahead, had joined together, and taken up these smaller ones and gone on, the confidence of the public would have remained in the insurance interest, policyholders would have been protected, and the policyholders in these larger companies would have been uninjured, how much better would it have been for the insurance interest? And that same principle applied to savings banks would have saved the reputation of savings banks in the State and throughout the country. A very few years ago every man throughout the State of New York could say that no savings bank had ever failed within the State, and so long as this condition of things remained, just so long did every body have confidence in these institutions. To-day, since these institutions, one after another, have been continually dropping out of the current, we find men beginning to be suspicious of savings banks. They are fearful to put money in them, and there is constantly going on a withdrawal of deposits. And, Senators, one of the injurious results connected with this investigation will be the tendency to weaken confidence on the part of depositors, caused largely, in my opinion, by the evidence which has been permitted to come in here in connection with sales made by receivers. And let me say one word right here in regard to receivers. Their transactions, made possible under the law, will one of these days become a subject of investigation by the Legislature and

courts. There is more weakness and rottenness, and criminal neglect cuddling under the mantle of the courts with property in the hands of receivers, than can be found in all the companies and all the corporations that have been organized in or out of the State. Let me call up just one illustration. Take the case of this very Third Avenue Bank. The receiver takes the assets in his hands, and although holding them but a year, or a year and a half, he has permitted \$70,000 to slip out, away from widows and orphans, away from depositors, gone for the benefit of lawyers, for the benefit of receivers, for the benefit of appraisers. Of what earthly use was it to get three men, paying them a salary of \$1,500 apiece to appraise property — or \$20,000 going to one attorney for bringing suits on bonds claimed to be utterly worthless. Here is where the absorption of the funds largely goes. But then comes the depreciation in real estate and in other property, by reason of forced sales. And is it surprising that the Superintendent of the Bank Department, if gifted with ordinary wisdom, should have sought for some, for any, possible way by which he could get out from putting these banks into the hands of receivers and causing depositors these losses? He did look over the ground. The Legislature essayed, as he thought, to furnish him a plan by which he could get around this danger. He endeavored to act under this merger clause. He went to New York and consulted with bank officials, after consulting with the Attorney-General, and after being advised by him to go down and see what he could do.

But it has been said here, “nothing came of it.” That is very true. How many of us, Senators, act on our best judgment, with the idea of bringing about a certain result, and nothing comes of it. We have been informed in the progress of this trial, that some Senator around this circle got “ambushed” the other day, at the races. We sometimes think a certain horse is going to win, but we often find to our sorrow, the other horse is victor. Are we to be charged with culpable neglect of duty, because we did not see and know that “nothing would come of it?” The superintendent acted in connection with this merger clause, acted honestly, acted in accordance with his best judgment, acted in accordance with the advice of the Attorney-General. Now, because nothing came of it, are we to be told that he had no right to assume that anything might come of it? He exercised the best judgment which he had, and having exercised that, under these circumstances, in the midst of all these surroundings, I submit that he is not to be judged harshly, because nothing came of it.

The third time, as I said, that he went to New York, he happened to strike the city in the midst of Duncan, Sherman & Co.’s failure. Now, it may be, that there are Senators who would say that he ought



to have put the bank instantly into the hands of a receiver, although there was this panic. I attempted to reply to that suggestion yesterday. Other Senators may say that he had no business to consult or advise with these gentlemen in New York. Now, I submit that there is no man in this world so wise, possessed of so much knowledge, that he needs to scorn the advice of many a man about him. And to whom does the superintendent go for advice? Does he go to some man who knows nothing and can know nothing in regard to the issues which are presented for his decision? On the contrary, he goes to such men as Mr. Stewart, president of the largest trust company in the United States, if not in the world, not particularly interested in savings banks; he goes to such men as Mr. Morrison, president of the State Bank, that has the payment of interest upon the State securities, the accredited agent of the State not connected with savings banks. Then he goes to such men as Mr. Sisco; then he goes to such men as Mr. Macy, president of one of the largest and best savings banks in the city of New York, and in the State. These, Mr. Ellis selects as persons with whom to advise, the men who are at the head of the very strongest institutions of the kind in the country, and they advise delay.

Let me, in this connection, call your attention briefly to a little of the evidence. My learned friend on the other side read some portions of the evidence of Mr. Stewart, with whom Mr. Ellis advised, and omitted to read some. I wish to call your attention to the testimony of Mr. Stewart on page 438, single question and answer: "Q. You have a general knowledge? A. I have a general knowledge. It is impossible"—and I wish to emphasize this answer of Mr. Stewart, clear-headed and shrewd business man as he is—"It is impossible, looking at a report retrospectively, to say what a man would have done under the circumstances. With the light I now have, with this report in my hand. I should think it would be the duty of the superintendent to close it up. But it is impossible, looking back at the assets as they would have stood a year and a half or two years ago, looking retrospectively at this thing, to say what a man would have done, or should have done."

Then, also, on page 439: "Q. Suppose Mr. Ellis closed it at the time he first talked with you about it, what do you think would have been the effect then? A. I think" (this is a portion which my friend did not read), "I think it might have increased the uneasiness prevailing among depositors of savings banks, and the fear was that it might lead to a general run on savings banks." That is his judgment in regard to the danger of hasty action, and about which Mr. Ellis was to decide; and then he goes on giving elements which would enter into the decision which Ellis was about to make; elements which concerned Mr. Ellis; elements which he was restrained by, and

which he was bound to give weight to, and he concedes that there is one, and another and another element which entered into the question which would tend to influence him in the making up of his judgment; and he says: "That would be a question for the man himself to pass upon. In other words, sitting here, looking at it retrospectively" — I ask Senators to mark — "in other words, sitting here, looking at it retrospectively, is a very different thing from taking it up with the surrounding circumstances, and passing judgment then." There is a vast difference, Senators, between the position Mr. Ellis was occupying in 1875, with this merger provision before him, with the possibilities of appreciation in real estate and in securities, and with the dangers of a panic impending, than looking at it now with your present knowledge, and in the lights of events which have followed 1875.

Now, I will call your attention to another bit of evidence, and that will be the only one I will refer to, provided you will read the testimony of these gentlemen — Stewart, Macy, Morrison or Sisco, and read the whole of it. In the testimony of Mr. Macy, my friend having read portions and skipped portions, I submit that it is but right that I should, even though it may detain you a little, call your attention to some testimony he omitted to read on pages 464, 465 and 466. Mr. Macy says:

"Q. Will you tell what occurred between you and Mr. Ellis as far as you can recollect it? A. It was a general conversation; I remember very distinctly my reply first was to close it up at once.

Q. That was your first suggestion? A. Yes, sir; then we got to discussing the interest of the savings banks, which was very large through the State; the excitement was very great at that time in regard to their failure; we discussed as to whether it would be to the interest of the savings banks generally throughout the State to delay it for a short time; I think that was our conclusion, to delay it a little while; but not long.

Q. The length of time was left indefinite? A. Yes, sir; I think that was about the 1st of August, 1875.

Q. Your idea is that this conversation was about the first of August? A. Yes, sir, it might have been a month or two before.

Q. You cannot, I suppose give all the conversation that passed between you and him? A. No, sir; it was a general conversation relative to the savings bank interest of the whole country.

Q. Do you recollect of his calling your attention to the fact that the Third Avenue Savings Bank was insolvent, and he came to talk with you about the expediency of closing it up then? A. Yes, sir; that was the object of the interview."

Then Mr. Macy was asked whether Mr. Ellis had giving him full in-

formation as to the affairs of the Third Avenue Savings Bank, and he said "no, but I was pretty familiar with the bank and the situation of it."

Then we pass over to page 466. Here comes evidence bearing on the question to which I alluded yesterday, that the worse the showing of the bank on this examination, in 1875, the more necessity there was for caution and care on the part of Mr. Ellis in his action. And here we have the testimony of Mr. Macy upon that very proposition:

"By Mr. CHAPMAN:

Q. In the midst of a panic, or where there is a panicky feelings in the street, the worse the showing would be, the greater would be the shock on the street, would it not? A. I think that the failure of any savings bank would tend to increase it.

Q. The worse off it was, the more it would tend to effect it? A. Of course.

Q. When Mr. Howell came to consult you at the time you spoke of was or was not your advice to him to take the course that he did in regard to it? A. It was very similar to the advice I gave to Mr. Ellis; in the first place I said, 'close it up,' then it also happened to be at a time of very great excitement in the market, and we both concluded it was better to leave it for a short time.

Q. That was the case with Mr. Ellis; at first your idea was to close it up at once, but, upon reflecting you came to the conclusion it would be better not to close it up at once? A. We thought in regard to other saving banks and other moneyed institutions of the street, it was better to delay it a little."

Now, passing to page 467, I will read but a sentence or two more:

"By Senator ST. JOHN:

Q. Would the failure, or the winding up of the savings bank, that had this reputation among business men, of being an unsound bank, would the winding up of such a bank create any great sensation in this market, or would it injure sound banks in your opinion, to any great extent? A. You should modify that, it strikes me, because those of us that were in the savings bank business, inside the other banks, and knowing it would not effect us, so I said 'close it up instantly.'

Q. Then it would not have created any great confusion if you had closed it up? A. It would in the street generally."

Now my friend proceeded with the question:

"Q. Did you think the closing up of this bank would have materially injured or impaired the standing of other good banks in any way? A. No, sir; it would not have done that."

And then my friend skipped the following :

“ But there was so much in that that it did seem to you that it was best to delay it a little while ? A. Yes, sir.”

Then another question and answer which my friend skipped :

“ Q. In any of the conversations you had with Mr. Ellis, did he give you the particulars of the bank ? A. No, sir ; as I said before, I was so conversant with this bank since Mr. Howell had it there was no necessity to do it.”

I read this merely as an illustration of the position of these men on his question and the view which they took of it at the time.

Thus we find Mr. Ellis after consulting with these men, acting cautiously, and, I submit, with care and prudence and wisdom and discretion. At any rate, it is not a case of neglect of duty. It is a case of error of judgment, if it is any error whatever, indicated by the very testimony which has been given here and by the very act which he himself performed.

But time passed along, and after affairs had become so far quiet as that Mr. Ellis thought it was safe, he sat down one morning to draw up the papers to hand the bank over to the Attorney-General. That morning, a former Governor of the state and one or two other gentlemen came to his office while he was engaged in this business and proposed, the appointment of a receiver. Everybody consented to the appointment of a receiver, and Mr. Carman was the man proposed. The matter was turned over to the Attorney-General, who then proceeded to act. It has been alleged from time to time, that Mr. Ellis secured the appointment of Mr. Carman, but it appears from the evidence he did nothing of the kind. He did not go out of his office, except to swear to the complaint which was drawn up.

But it has been suggested here, that he ought to have raised an objection to the appointment of Mr. Carman as receiver. He has explained fully in regard to that in his testimony. It is said that Mr. Carman having made a false report, and he having knowledge of that fact from the letter of Mr. Reid written in March previous, ought to have objected to it. First, that is a matter that is in the hands of the Attorney-General. Second he testifies to you that at the time everybody being unanimous on the proposition of the appointment of Mr. Carman, the letter of Mr. Reid did not occur to him. The fact that Mr. Reid had stated in his letter to the department that Mr. Carman had sworn falsely to the report, did not occur to his mind at the moment. And, Senators, is it not within the experience of every one of us that again and again at critical times we omit to remember something brought to our attention months before. This was the case so far as Mr. Ellis' action was concerned in connection with the appointment with Mr. Carman. Everybody

being harmonious, there being no objection to his appointment from any source, there was nothing naturally to call his attention to it, and at the moment it slipped his mind. The letter of Mr. Reid received six months before, called Ellis' attention to the fact that Mr. Carman swore to a false report in January, 1875. It is very true, as Mr. Lamb testified, that neither the president nor secretary had been in the bank for any great length of time. When this report was made, Mr. Carman had not been there long enough to have gone through the assets, so as to be able to verify every one of the items or the liabilities. Mr. Carman may have sworn to that report in all honesty and all sincerity, and in all truth. He would be compelled examining only a few days before the first day of January—he would be compelled to take the assets as they had been handed over to him by the cashier and the various officers connected with the bank.

And my friend has made allusions to these trustee bonds as being among these assets, and he facetiously put these bonds up for sale before this Senate, and wants to know who would give twenty-five cents on them. So far as we have 'gone, Senators, so far as we have any evidence before us, the trustees' bonds in these various institutions have been among the most available assets. Take the \$55,000 of bonds in one, and take the various bonds which have been allowed to others of these institutions, and they have been paid, nearly all of them. Take these bonds in this Third Avenue Bank. We find that nobody has succeeded in getting a decision against their validity. Some of them have been paid without suit; some of them have gone to the courts, where their validity has been tested on demurrer, and the courts, have sustained the bonds and overruled the demurrer. So far, then, as we have found any decision upon the question of the validity of those bonds, they are valid, and the depositors—if the courts in the future shall hold their positions, and I can see no reason why they should not—the depositors will come to realize the benefit of all of these bonds.

The question of the Tarrytown property I will allude to but briefly as my associate will cover the whole of that ground. It has been indicated by the line of some of the questions which have been put here, that the Tarrytown property was obtained by the bank improperly; that it had no right to obtain it; that it had no right to own it or to hold it. Senators, who have read the evidence, will remember that this Tarrytown property came in to the possession of the bank in this way: The bank originally made a loan of some Atlantic Steamship Company stock. The principal and the surety upon the loan failed and the bank was compelled to realize what it could. The bank had the right to make the original loan under its charter under

the law then existing. Having made a loan, the parties themselves having failed, there was simply the question of taking the Tarrytown property as being the best possible thing to be done under the circumstances, and they had the right under these circumstances to take it. Besides, the question as to whether they had the right to take it or not, had been brought before the Supreme Court, and the Supreme Court held that they had the right to take it and hold it. That ought to be sufficient to justify Ellis in passing the Tarrytown property.

But, it is said, some of these Southern State Stocks were held by this bank, which were of no value. In the examination of this bank in 1875, Mr. Reid put his values upon certain of these southern securities. Now if you will take the market value of these very southern securities, which are stated here to be absolutely worthless, if you will take their market quotation, to-day, you will find that there has been an increase in the market value of something over \$26,000 beyond the value Reid then gave them. I took from a paper here last Saturday a quotation of these various State stocks, and, putting them side by side with the very valuations which Mr. Reid put upon them in March, 1875, I find there is this \$26,000 of appreciation in these State stocks alone.

Now, another thing you will remember in the testimony here. Mr. Best throws out a hint which gives a clue to the value of these southern securities. They are variable, changing as the wind, changing as the politics which control the legislatures of those southern States. Repudiated to-day, they may be adopted to-morrow. Moreover, this matter of repudiation has first come up in *almost* every single instance since 1875, and in *every* single instance since 1873. Let me call your attention to the expression of Mr. Best, on page 451 :

“Q. Do you understand that all these stocks—Alabama, South and North Carolina—all are repudiated absolutely by the States? A. No, sir ; there are recognized bonds and repudiated bonds.

Q. I am speaking of the class this bank held ? A. Yes, sir ; the North Carolina bonds are all recognized ; of the South Carolinas, \$141,000 were repudiated and \$14,000 were recognized ; of the Alabamas, all (\$160,000) were repudiated ; the Tennessees are all recognized by the State as a valid obligation.

Q. Have you such information as to lead you to tell that the repudiation is permanent or only temporary ? A. That I cannot tell.

Q. I didn't know but you had corresponded in order to find it ? A. Yes, sir ; I have not only corresponded, but I have gone into those States ; they say positively that they will not do any thing with them ; *but the next Legislature may change all that.*”

Note, Senators, the expression—“the next Legislature may change all that.”

And Best has paid more attention to the values of these southern securities than any other witness. In his examination before the committee in the Mechanics and Traders' Institution we find that he went down into the southern States to see about these very bonds, and that he talked with southern men, and perhaps is as familiar with the position of the southern States in regard to these bonds as any one of the receivers; and we find him taking the position that, although they may be repudiated to-day they are subject to be legalized to-morrow or when a new Legislature gets in power; and thus the value of these very securities is liable to appreciate as well as to depreciate.

But, Senators, suppose for a moment that you shall come to the conclusion that the Superintendent of the Bank Department in this one case of the Third Avenue Savings Bank did not exercise his judgment properly, I do not concede it, but suppose you do, and suppose I step right out upon that platform and stand side by side with you on that proposition, then how does the case stand? Here is a man who has been tried, as no man ever was tried before, on all kinds of charges and in all sorts of ways. The Senate here have thrown the bars all down. There has been the wildest field of investigation. My friends on the other side have been in the department and gone through all the pigeon holes and books and documents. We have had one trial before a committee and another before the Senate. After they have thus examined Mr. Ellis' past and have raked over the whole four years of his official life, they can find nothing until they come to the case of the Third Avenue Savings Bank. Now is it proposed by Senators after thus having pursued this investigation, to turn this man out of office, and to fix this stain upon him for a simple mistake of judgment? Does that proposition commend itself, Senators, to your sense of justice, of right, of humanity? Is it right that you should sit here in judgment and after looking over a man's four years of official life, having found but one solitary case of mistake of judgment, you should attempt to fix upon his name ever hereafter the stain which a vote of "culpable neglect of duty" will affix. Senators, I submit to your sense of justice, to your sense of right, that it is not a proper and a fit thing to do. I took up some three or four of these various institutions and went down step by step until we came to the close of each, and I submit to you whether in any one of them there was a case upon which you could stamp "neglect of duty." So we could go down through each of the others, and my associate will doubtless do this, and you will reach the same conclusion as to each. When these letters and these reports concerning these various banks came to Ellis, instead of his doing nothing, as my friend on the other side so often

said, we find in every instance that he does act. It may not appear on the records of the department, perhaps, for in those records you find no account of Ellis' visits to New York, of his communications with the trustees, of his dealing with the presidents of the banks upon the necessity of banks helping each other, but you find in the case of each one of these banks that he takes some particularly effective action. And thus we come down with the superintendent entirely clean, I submit, to this one solitary bank, and here it is not a case of neglect of duty, but it is but an error of judgment, if it *was* an error at all.

Now, I wish Senators, for a moment or two, and I will detain you but a moment or two longer, to call your attention to the kind of superintendent that would be required to fill the bill as indicated by the various questions and suggestions made from time to time around this circle. I suppose that every Senator here has the idea in his own mind that he knows a dozen men that would make a thoroughly competent superintendent. I have not any doubt but that is so; but, when you attempt to measure that superintendent by the measure that you propose to apply to this superintendent, then I submit to you that you know but very few men; I submit to you that you do not know one single man within the whole line of your acquaintance who can come up to the requirements indicated by these questions and suggestions. Why, the line of questioning and the line of suggestion would indicate that the superintendent must know every thing almost. Let me call your attention to some few of the things he would be required to know as indicated by these suggestions and questions. In the first place he must be a competent book-keeper, he must be an expert accountant, so as to be able to make examinations himself, if necessary. He must know or learn all the banking laws, all the laws pertaining to loan and trust, and guaranty and indemnity companies. He must familiarize himself with the contents of these 400 different charters of these various institutions throughout the State. He must know how to construe each particular provision of each one of these charters. Not only this, but he must know the always present actual condition of every savings bank, and loan and guaranty and indemnity company throughout the State. Even that has been assumed here. Why, it is said, if he had gone down to New York, and looked into a certain bank he would have been told that the trustees had passed such a resolution, and so he must know what the clerks of these various institutions are doing, and if there is any stealing going on, any change between the deposit and the general ledger, he must know all about it, always. He must know the value of every foot of real estate owned by these 400 different institutions throughout the State. He must know the value of every foot of land mortgaged, in order to know whether the mort-



gage is within the law or not. He must be a good lawyer. He must have a legal knowledge which will enable him in searching titles to these mortgages, to go down through sets of abstracts of title, properly and thoroughly. He must be sufficient of a lawyer to know whether a title obtained through a partition sale or an infant sale or a guardian sale, has been properly obtained. Also to know whether all the parties have been properly served in those cases and title properly obtained. He must, under the line of investigation pursued here, be sufficient of a lawyer to follow all down through these. He must know every day in the year, the valuation of the stock of these banks, especially where the banks are running close to the wind. No matter what the fluctuations are, he must know the value of all the State stocks, what is going to be their value in the future, whether there is to be an appreciation or depreciation. He must not only know that, but the amount of cash the bank has on hand. He must know whether that is properly returned or not, and where there are certificates of deposits from other banks; he must know whether those banks are good or not, and whether the certificates are not counterfeit. He must know the condition of these trust and loan and guaranty and indemnity companies, and the condition of all the other banks. That seems to be assumed here as a part of the knowledge required of him. Not only this, but he must know the value of every suspense account and where a bank happens to hold a claim against some estate in the hands of a receiver, he must not rely upon the statement of some "respectable attorney" of that receiver. He must know what the present and future value of that estate is and will be, the result of the litigation, whether it will be successful or unsuccessful. He must know what the trustees are doing, and who is stealing, out of the 100,000 men, clerks, trustees, officers, lawyers, employees, through these various institutions all over the State. Then he must be firm and cautious, and shrewd. Then he must be thoroughly honest.

Many of these things are necessary I concede; but, when you attempt to try this man on the assumption that he must be possessed of one-half of these qualifications, I submit, you are applying a test to him that no one of us would ask to have applied to himself. When you find a man who will fill the bill which seems to be required of the superintendent here, you will find a man who is possessed not only of omniscience, but of foreknowledge, and when you find any such man, Senators, I submit that he will not consent to act as Superintendent of the Bank Department for a salary of \$5,000 a year. But I find that my friend, the Senator from the Thirty-first, requires still more of a superintendent; at least, I infer that from the line of inquiry he presented the other day. I find that he requires that the superintendent should have in addition to

the foregoing requirements, a knowledge of all the provisions of the Revised Statutes, in relation to insolvent corporations and their dealings with creditors. Then I find from another question, he requires of the superintendent that he should have a familiar and intimate knowledge of all the decisions contained in the reports of the Court of Appeals, of Howard and of Lansing, etc. I find furthermore from still another question, that he requires that the superintendent should have an intimate knowledge of the workings of bankrupt law; because he presents these three questions here for our consideration. I bring this up as an illustration of what Senators seem to require of a superintendent, and certainly in the utmost good nature and without a particle of malice connected with it.

Now we find from these questions which my friend, asks that he expects that the superintendent should have knowledge of all these facts. But I submit to the Senate, that it is not quite right that he should be required to have this intimate and perfect knowledge of the decisions contained in all the reports of the State, and of the bankrupt law until the Legislature shall make an appropriation to him sufficient to enable him to purchase a law library, that it is not right, when you are giving to him for the support of his department and the examination of these companies, an appropriation of only \$17,000, that you should expect, that he should know all of these things. And I may be permitted to bring up another suggestion in a good-natured way for the consideration of the Senator from the Thirty-first. I did think for a time that if he should be put on trial for neglect of duty, he would be liable to conviction. For some three or four weeks he was not here during the taking of testimony, and I was a little inclined to think he was chargeable with neglect. But, when my friend came back here and presented these three legal propositions, I was entirely and thoroughly convinced he was free from any such charge, and that he had been at home carefully looking over in his office the evidence in this case as printed in the newspapers, also looking at all the law points, and that he had been fearlessly and honestly engaged all this time in the investigation of this case so that he was all right. The burden of culpable negligence has been lifted from the shoulders of the distinguished Senator. He is entirely free, but the burden seems now to be thrown upon the shoulders of my three distinguished friends from the city. I find here that three distinguished lawyers in the city of New York, men at the head of their profession, men employed by the chief executive of this State to push this prosecution, have been engaged for three, four or five months investigating the law appertaining to this case, searching the Revised Statutes, going down through the provisions of charters, ransacking the department, hunting up evidence from any and every quarter, looking for points on which to

hang the superintendent's reputation ; and still these men, thus eminent, having this matter in charge, having this length of time to investigate, I find that these men had not succeeded in discovering that the superintendent had neglected his duty in not having looked over these provisions of the Revised Statutes, these decisions of the Court of Appeals and Howard and Lansing, and these provisions of the bankrupt law. How great, therefore, must have been their neglect. Now, this is merely illustrative. It furnishes another illustration of how the best of us, how the most eminent of us, are liable to be charged with culpable neglect of duty, if, as we go along down through our daily paths, we happen to omit or overlook, or fail to find that which somebody else finds so readily. Let me say here, that any personal allusions or suggestions I may have made, have been only made in the way of illustration, and with no possible design on my part to injure or wound or repel the feelings of any Senator.

And now, in conclusion, I ask that the case of the superintendent may be considered here by you, Senators, any as of you would wish to have your own case considered if you were brought up on similar charges. Indeed, we are all fallable, we all commit errors, we all are guilty of neglect of duty day after day and year after year ; and now is it right, where a man has exercised the best judgment which his Maker has given him, is it right that he should be judged by a different standard than that which we would be ready and willing to have applied to ourselves ? Invoking the same charity we all ask for ourselves, I leave Mr. Ellis' case with you.

Mr. McGUIRE then addressed the Senate on behalf of the respondent, as follows :

I feel, gentlemen and Senators, an unusual degree of embarrassment in knowing what subjects to discuss or what line of argument to pursue in the presentation of the views which I entertain in this case to the Senate. The proceeding is so anomalous, so unprecedented in its character that it becomes almost an impossibility to address any particular line of argument to this body. Here are no charges of any specific character preferred against the respondent in this case. There has been a bundle of papers called " Documents," presented to the Governor of the State, and by the Governor transmitted to this body, and when the Senate meets it adopts certain rules and regulations, and provides that the rules of law in regard to the taking of testimony shall be applied in examining what is contained in the papers or documents submitted by the Governor. We had supposed when we came here that this proceeding was a judicial inquiry, that the matters to which the Senate's attention was called by the Governor should be examined and determined ; but we soon found, gentlemen, that the judicial tone of the proceedings was soon dropped and

the inquiry converted into an inquisitorial proceeding, not confining the examination to what the Governor sent here and upon which the conclusion of the Governor was based, but all barriers, all restrictions, which have been enacted for the protection of accused persons seem to be removed, and a wide field substituted for explorations of every conceivable matter pertaining to the Bank Department from the time that Mr. Ellis took possession, as well as the action of receivers appointed by courts. I refer to it gentlemen, Senators, for the purpose of showing the irregularity of these proceedings and not for the purpose of making any complaint against the action of the Senate itself. The Governor sends to this body certain charges, or statements, in which he advised this body that he has concluded from these statements that this respondent should be removed from office. Upon the *ex parte* statements furnished to him, he concludes that the superintendent should be removed and asks this co-ordinate body of the government to concur in that recommendation. There is not a man around this circle, there is not a man connected with this prosecution but what must now concede that every statement contained in the documents furnished to the Governor upon which the removal was asked is not only most infamous in its character, but false in every word and in every detail of the statement. The counsel who represent the people here, will not, cannot, dare not justify any statements made by these two gentlemen, Floyd and Gregory; and still the Governor, with these libelous, false and perjured statements of those two gentlemen, appends his signature to a document, sends it broadcast to the people of this State, that the Superintendent of the Bank Department is an unfit person to hold this position, and asks the Senate so to conclude.

Now, we had supposed that we came here originally, when this investigation was ordered, to try the truth or falsity of the statements made by Floyd and Gregory, whether the superintendent had been guilty of any wrong, whether the superintendent had been guilty of any neglect of duty; but, when we get into the investigation, we find that other gentlemen, during the progress of the investigation, for some purport or some purpose, for personal malice or personal advantage, trump up another matter of charges in relation to other banks; and they are passed over to a committee during the progress of the investigation upon a matter which the Governor had certified to you, which he had indorsed to the people of this State, was sufficient to remove the superintendent from office. So, when we commence this investigation, we find these additional papers. Yet large latitude has been given to the prosecution to prove every matter and thing connected with those. The superintendent was prepared to meet every charge, direct and indirect, contained in the Mallon and

Mack papers ; but when he proceeds to an investigation, the Senate, in the exercise of a discretion which it undoubtedly possessed, opened the door wide, gave the utmost latitude to the prosecution, and everything which the superintendent or his counsel had any right to assume or expect would be introduced into the case laid now before your body for consideration for what it was worth, and then we were met, soon after the investigation commenced, and upon its very threshold, with a remarkable declaration from distinguished Senators, that they could remove Mr. Ellis from office without a particle of testimony taken in this case. We were told by distinguished Senators that they need not examine a witness, that they need not take testimony, but that each Senator could go out in the streets virtually — not using this language — but that each Senator would go out in the street and talk with John Doe or Richard Roe, and ask him what he thought ; whether Mr. Ellis should continue in his office or out of it, and if Doe or Roe told him that Mr. Ellis was an unfit man, that he could come into this body and vote to remove the incumbent from the position he held. I say that we met with that remarkable declaration, and I have not heard that statement yet repudiated by this body. Gentlemen, you, therefore, see the embarrassment under which we labor, whether you are to remove Mr. Ellis from office, if you remove him at all, upon testimony taken before you, or from idle gossip in the streets and in the by-ways.

Again, we feel extremely embarrassed by the presentation of certain questions by the learned and distinguished Senator from the 'Thirty-first. However, to us, immaterial and unimportant those questions may be, they do and shall receive, as far as I am concerned, a respectful consideration. So, therefore, to sum up these various positions and aggregate them, we have the charges of the Governor as contained in the case of the Mechanics and Traders' Bank, upon which this investigation proceeded. We have this large volume of testimony to examine. What this testimony proves, or tends to prove, in regard to the fitness or unfitness of the superintendent, is somewhat problematical. We, therefore, have the declaration that no evidence is necessary to be taken, and then we have the statements contained in the question which has been submitted by the Senator to whom I refer.

Now in the course of my life, I have had some acquaintance, and a varied acquaintance with proceedings in courts. There is a degree of regularity in these proceedings, and to the requirements of the courts counsel can readily conform themselves. There is an issue to be tried and to which evidence is to be directed, and counsel can readily see the pertinency of evidence upon those issues and the rules of law applicable thereto. But in an amalous proceedings of this character, it can be easily seen by every person around this circle, that there can-

not exist, amidst this uncertainty of views and this mass of testimony which has been introduced, a regular, defined, logical argument, tending to any result, because we do not know what the result to be arrived at is to be, or is to be investigated by the Senate. But so far as we can anticipate the action of the Senate, and as far as we can anticipate any point, any rule, any action to be taken by the Senate why, as briefly as possible, I will call the attention of the Senate to.

Now, what are these charges, their purpose and object, and why were they sent to this body for investigation, and why was the highest department of the legislative body of this State convened for the purpose of entertaining an investigation and adjudication or determination, if you please, of the matters contained in these papers? Why, it is not pretended or asserted, nor has malice even dared whisper any suspicion against the good name or integrity or honesty of the incumbent of the Bank Department, now before you. Personal malignity, personal animosity, however reckless and unscrupulous that may be at times, have never yet sent forth one word or one syllable challenging or questioning the integrity or good faith and the honesty of this official. Then, what is he here on trial for? Here you have a public officer that you concede to be honest; you concede him to be of unquestioned integrity. As yet, there has been no doubt but that he possesses the necessary qualifications to discharge the duties of this office. Then, let me ask again, gentlemen Senators, what are you trying him for? Why, it is said, a "neglect of duty!" Now, is it possible that this neglect of duty is so refined, so doubtful, so difficult to be seen, that the State has to assemble this body together, to employ distinguished lawyers, and engage week after week to prove that an honest official of this State has been guilty of a simple neglect of duty? Why, gentlemen, the thing is without a parallel in the history of this or any other State. It is the first time that such a course of procedure has ever been adopted in this State, and the experience of this has demonstrated that it should be the last.

To repeat, you are trying an officer for neglect of duty. Do you propose to remove an officer for neglect of duty when the non-performance of that duty is not so gross that you can see it? Are you going to hold a public officer to a performance of duty which you have to employ lawyers, and require those lawyers, month after month, to produce evidence, to hunt up law to show that, in their opinion, a duty has been neglected? Why, I had supposed that the great State of New York, as represented through its Senate, would not entertain the proposition of removing a man from office for a simple neglect of duty, unless that duty neglected was so gross that every man that run could read it. I did not suppose, and I cannot yet suppose that this Senate proposes to remove a man from office, upon the charges pro-

duced here, when they have to employ lawyers to speak by the hour and speak by the day to show that a neglect exists. But such it is.

And why, and under what circumstances did this case come before this body? We find, first, that in 1876, in October of that year, the receiver of the Mechanics and Traders' Bank, transmits to his Excellency, the Governor, certain papers which he says are of the utmost public importance. If Senators will look at that statement they will see that Mr. Best, in his communication, did call the attention of the Governor to the fact that they are of the utmost public importance. The Governor, it seems, did not regard them of that public importance. They were filed away in the pigeon-holes of the executive department, and consigned to the executive tomb of the Capulets. There they remained during the administration of the then Governor. Those papers found their way into the newspapers. They were printed, circulated, commented upon from one end of the State to the other. The Governor did not even see fit to attach sufficient importance to them even to serve a copy upon Mr. Ellis, or even to notify Mr. Ellis that any such papers were in his department. They could go to the public with all unfavorable comments and criticisms, and public opinion could be manufactured by the publication of them; but not one word officially was ever communicated to the superintendent that any complaint was made against him by his Excellency the Governor. There they remained until the first of January, and upon the inauguration of the present Governor, they were suffered to sleep a sleep that ought to have known no wakening. The new Governor did not communicate to Mr. Ellis that there were any charges against him in his department. He did not deem them of sufficient importance to call the attention of the Senate to them, or to the Bank Department itself. But, in the course of time, the Governor, as was his prerogative and his duty, finding Mr. Ellis holding over, his term of office having expired, sends to the Senate the name of a successor. The Senate, for reasons satisfactory to itself, refuse to concur in the recommendation of the Governor, that the individual he named should succeed Mr. Ellis in this department, what then? Then for the first time, after the rejection of the nominee by the Senate, was rescued from their hiding place in the executive chamber, the charges which initiated these proceedings. Can any man tell me if this was a matter of such public importance, why they were suffered to remain in the executive office for six months unnoticed, neither branch of the Legislature informed of its existence nor the inculpatated man informed in an official manner; and am I not right in assuming that, if the Senate had concurred in the recommendation of the Governor, these charges would never have been unearthed and sent here for investigation? But they came into this body for trial after the Senate had refused to

confirm the nominee that the Governor sent to this body for confirmation. The purpose, the object, the animus, I leave for each individual Senator himself to determine; but I must be permitted to say, and say it with all respect to the outgoing and the incoming Governors, that, if this matter, these charges against Mr. Ellis, were of that serious magnitude and importance which has now been attempted to be given to them, then this body should have been apprised of the existence of the delinquencies of this official, and their co-ordinate action with the Governor been invited. If they had not that importance, if they were suffered to remain for six months unnoticed, and then only brought after the disappointment of the rejection of a nominee, then this Senate shouldn't have been troubled with their investigation at all. But they are here and such consideration is to be given to them as in the judgment of the Senate seems wise and proper. But, before proceeding to the consideration of the merits in this case, the Senate will indulge me, while I call attention to a few of its surroundings. I have already stated that it is an unprecedented proceeding. It stands alone and will stand alone in the history of judicial, quasi-judicial or administrative proceedings. And, with all of its remarkable surroundings, and with all the remarkable proceedings that have been had, and the manner in which these proceedings have been instituted and presented, there is something internal appearing in the record itself which it is proper I should call the attention of the Senate to. I have already, gentlemen, Senators, called your attention to the fact, that every statement in the original charges in regard to the Mechanics and Traders' Bank, has been demonstrated not only to be malicious but purposely and intentionally false. You will see by looking at the records that these two men, Gregory and Floyd, were a couple of bank wreckers, that they were attempting to get hold of this Mechanics and Traders' Bank with its assets of \$2,500,000. You will see that during the progress of these charges that they were going up and running to Albany and getting into the newspapers. You will see from their record itself that these two fellows got up a sham meeting in which it was claimed that Gregory was elected president of the bank, and that he commenced a proceeding in court in the nature of a *quo warranto*, and asking the court to declare that he was elected the president of that institution, and that the then president was assuming illegally assuming to exercise the duty of the office. By the action of these two men they brought the bank into disrepute in a greater or less degree, and when they were beaten in the courts, when the courts of the city of New York declared that this man was not elected to the presidency of the institution, then they commenced the wrecking process by getting up false statements, false allegations in regard to its resources, in regard to its liabilities, getting them into the newspapers and attempting to



implicate the Superintendent of the Bank Department by his not taking action upon their infamous, lying, false statements.

The next thing we hear Mallon and Mack present, their charges in the latter part of April after this investigation had been running for days and at least for two or three weeks. Where is Mallon, this man that swore so much? Mallon appeared before the Senate committee, and he is one of those unfortunate widows and orphans which the distinguished Senator from the Ninth has talked about. Why, it appears from Mallon that he had \$8,000 in this bank at the time of its failure — the Third Avenue Bank. He could not get but \$5,000 in on his own account, but he puts in \$3,000 in the name of his wife; \$8,000, or more. And here are Senators talking with tremulous voice — and my distinguished friends on the other side join in — about the miseries of widows and orphans! And where is Mack, that man that you made responsible for all these charges which the Governor has sent to you? Why have not my friends produced Mack here? Why haven't they put him upon the stand? Couldn't Mack, if he will draw up a paper of this style to the Governor, and the Governor deem it of so much importance as to communicate it to the Senate for investigation, it is not to be presumed that Mack knew something about the paper he was signing, and the paper upon which the Governor ordered investigation? What is there about that man, Mack, that my learned friends have not produced him before this body? Were they afraid that Mack would disclose the secret animus of this investigation? Were they afraid that Mack, if put upon the stand, would tell us who prepared those charges and the purpose for which they were instituted? Or what was the reason? A man that makes charges against the officers of ten banks and pretends that he has knowledge of the facts stated in these papers, ought to present himself before the body which is to investigate them, as a witness, and substantiate their truth! I have no doubt, gentlemen, Senators, if that man had been produced here, there would have been disclosed an infamous conspiracy against Mr. Ellis, which it was the purpose of the prosecution to conceal. Some men may have been connected with that conspiracy that it was important to conceal. There must have been a reason for omitting to call him and the only reason is that the real object, purpose, animus of this proceeding would have been developed.

Now, I call the attention of the Senate to what I stated, because it is in regard to what I have stated in regard to the claim upon the part of the Senate, that they had a right to remove a man from office without swearing a witness or taking a word of testimony. If that be so, of what use is testimony? What use is there in counsel taking up your time in the discussion of any question?

Senator WOODIN — Has the Senate made any such claim ?

Mr. MCGUIRE — I didn't say the Senate did — *claimed* on the part of the Senate.

[Resuming.] I stated some time ago and I will repeat it that Senators had made such a statement and I have not yet been apprised that the Senate had repudiated it. There is nothing appearing in the proceedings of this Senate, no action taken by this Senate but what the Senate itself acts upon the statement of the learned Senator who initiated it — I do not say, I do not wish to be understood, that the Senate has adopted a rule that they can remove a man from office without first examining into the propriety of the removal, but what I will call your attention to is on page 397 and this doctrine I have not heard repudiated or denounced by any Senator. Senator HARRIS, in giving his views to the Senate, says: "The Senate has the right to remove the respondent without taking any testimony whatever; the Senate has the power to act in this case, without going through the legal forms, but by simple inquiry." Then, referring to the statute — but it may be well that I should read the whole of it. I do not wish to misrepresent or garble or leave one sentence disconnected from the rest. "And in the answer to the Senator from the Eighteenth, in regard to his proposition, is that we are trying this case upon testimony not taken before the Senate as a body. We have the testimony taken by the committee and we have resolved to act upon that testimony as well as the testimony given before the Senate here orally."

Senator HARRIS — What page are you reading from ?

Mr. MCGUIRE — Page 397 of the Senate proceedings [continuing]:

"Therefore if it is proper to act upon that testimony, then it is proper for the Senate to act upon testimony taken when a quorum of the Senate is not present, because we act, and our judgments are formed upon the printed testimony and not upon the language used by the witnesses in the presence of the Senate. The statute in regard to that is, that the Governor recommends, and the Senate acts; that is all. It does not provide that charges shall be made; it does not provide that witnesses shall be sworn, but that the Senate are to inquire as they see fit, in regard to the facts charged against the respondent. They may inquire in any form that they please. We may dispense entirely with the swearing of the witnesses; we may dispense, and yet be within the statute."

I say, to repeat, that I have not yet heard that position of the Senator questioned or doubted, since the statement was made by the learned Senator himself. Now, with such a rule how are we to anticipate the action of the Senate, or the information upon which the Senate will act? If this irresponsible power exists, if this body can remove a man, merely by force, by the execution of its will or its

mandate, how are we to anticipate and how are we to answer and meet the secret information obtained or the peculiar workings of the mind which might lead to a result? But, in that connection, permit me to call the Senate's attention. In the opening of this case, my learned friend upon the other side had much to say about this statute. His position was, that this statute gave the Governor power to ask a removal, and the Senate could without any inquiry at all, respond to the demand of his Excellency, and remove the officer. The statute, as will be observed by the Senate, is very brief. It provides that, in all cases where a person holds an office, appointed by the Governor, with the consent of the Senate, he may be removed by the Senate upon the recommendation of the Governor, except justices of the Supreme Court, circuit judges and the chancellor. Now, that is all there is of it. And, under that statute, it is claimed by the counsel for the State, it has been stated by learned Senators—as I have read—that there is a power existing in this body which is the converse of the power of appointment. That is, the Senate can appoint without giving a reason, and the Senate can remove without giving a reason. And, if there is nothing to be looked at but the statute itself, is not that true? When the name of a nominee for appointment appears in the Senate, it is presumed that the Senate makes a proper inquiry as to the fitness of the man for the place and then confirm the man, whatever might be the practical result—speaking now of the theory—and if they regard the man as a competent and fit person they confirm.

Now, then, the statute is the converse of the power of appointment. If the Governor himself, becomes satisfied that the person is an unfit person, he asks the Senate to do what? He asks the Senate to revoke their action of appointment. He virtually says to them, "I was mistaken in sending in the name of this person for your sanction. I have become satisfied that he is an unfit person, and I ask you, I recommend you, that you reverse or revoke your action in your appointment." Now then, if that be so, if that be the construction of this statute, and if the rule initiated by the Senator from the Thirteenth be the true one, what does this trial amount to? What is its purpose? What right have you to swear witnesses at all? What right has any one here to administer an oath and what right have you to assume, if that be the construction of the statute, what right have you to assume illegal powers at all? This is not a legislative proceeding. It is not a proceeding that any law authorizes you to do. You may act under this statute, it is claimed. That prescribes no form, prescribes no course to pursue; and acting in the capacity that you are assuming to act now, the Senate will readily agree with me, that if it is an action in this character, they must find a warrant in some statute, and where

is the warrant in any statute that you can call witnesses before you and examine them and take testimony? What law has given you the power? And if a witness appears here, and commits perjury and swears falsely, intentionally, where is there any power to punish him? Again, if the construction of this statute be as claimed by the prosecution and by some of the Senators, what power have you to render judgment against De Witt C. Ellis at all? You may have the power, if that be the construction of the statute, to remove; but what right have you under such a construction to pronounce a judgment and put it upon your records to go down to posterity, fixing a stain and a stigma upon this man's name? Suppose Mr. Ellis was here upon trial upon charges of corruption — would this Senate assume, under this statute, to pronounce him guilty of corruption? Would you make a record, fixing indelibly upon that man's name and upon the name of all connected with him an infamous sentence, that he had been corruptly, designedly so, discharging the duties of his office? And where is your power to enter such a judgment at all? I ask you, Senators, now to look at any statute in this State, to look at any law, I invite the attention of the learned counsel for the State, I call the attention of the Senate to a single word in that statute, in any law, in any proceeding, that you can pronounce judgment against this respondent at all. At this early stage of the proceedings, I invite their attention to it, so, if there be any law, that they will have an opportunity to examine and present it to this body. As far as this investigation is concerned, you are a body of limited powers; you have to resort to statutes now for your warrant of power, the same as any other individual that assumes to act in this State. While you, in conjunction with the Assembly, may enact laws, you may possess all legislative powers, but, when you depart from the exercise of legislative powers, you have no more right to assume power than the meanest individual of the State, than the most menial officer that exists in it. I do not suppose that this Senate, in the investigation of this question, is going to assume any power at all. I presume that as long as they have given, and magnified this proceeding into the form of a judicial proceeding, that they are going to proceed according to the forms of law, and not assume or exercise any power, except the power that they possess.

As to the construction of this statute I shall have something to say by and by. I am now taking the construction put upon it by the counsel of the State, and if their construction be true, you simply have the right to remove this man from office, without rendering any judgment or making up any record against him. All other acts beyond simply the removal, are without jurisdiction. They are *coram non judice*—void. And I do not apprehend that it would be the Sen-

ate's intent only to assume power for the purpose of putting upon the record any stain or any stigma upon any man's name.

Now, there is another thing let me call the attention of the honorable Senate to, outside of the merits of this case. The respondent went upon the stand as a witness in regard to this Third Avenue Bank, and informed the Senate that he regarded it as his duty to consult with certain leading men, financiers of intelligence, probity and character, in the city of New York, as to their advice of what summary action on his part should be. In the objection to a question which arose upon the trial, the very fair and learned Senator from the Eighteenth, saw fit to give his advice, and he indulged, probably not in poetic, but in a little senatorial license, indulged in a little allegory, in hyperbole, and, in the course of his argument, he stated, "Suppose Mr. Ellis had met Freeman Clark, of *New York*," the report reads; I suppose he means of *Rochester*, Jay Gould, of New York, and talked with these men whose interests were antagonistic to the banks, and that he acted upon their advice, that he would be making a large amount fall to himself—and as there shall be no misunderstanding upon that point, the Senate will permit me to call its attention to page 926. The Senator says: "But to return to the question, what under these surroundings, were the influences that governed or influenced you to do these things; answer me that? A. Well, sir; I met Mr. Freeman Clark, of New York, and held a conversation with him; I met Jay Gould in New York, and had a conversation with him; they are strong financial men; they told me if I proceeded to disturb the Third Avenue Bank I would thereby shake financial centers; there would be a run upon the bank in which we were interested, and that would make large losses." It may be, he would render that for a reason, if he did, then there is not a Senator hears me but that knows he would render a reason fatal to himself.

Now, in pursuance of the Senatorial license, if Jay Gould's name was put in there in place of the president of the Manhattan Bank, in place of the president of the Seamans' Bank, in place, say, if you please, of Mr. Cisco, in place of the nine or ten other reputable men in the city of New York, I will ask, with all respect imaginable, why was it regarded necessary for the Senator, in his argument upon that question, to associate such men as Mr. Ellis consulted with, with the disreputable practices of Jay Gould? Was there any necessity for it? Had Mr. Ellis gone to Jay Gould and talked with him? Did Mr. Ellis go to the bulls and bears of Wall street to ask their advice about the effect upon the money market? Mr. Ellis goes where any prudent man would, to men above, beyond all selfish considerations, men that would not advise for the purpose of affecting their institutions, and their institutions could not have been affected

by any advice that they might give. I am unable to see the purpose of substituting Freeman Clark and Jay Gould in that connection, unless it be what subsequently followed, and what subsequently followed the Senate will indulge me a moment while I call their attention to it. These remarks were made on Tuesday—a week ago last Tuesday. On Thursday morning, the central, controlling organ of the democratic party at Albany came out with its leader, taking as its text the speech of the Senator from the Eighteenth, and I will read a portion of it, which has the same spirit, just the same argument, simply leaving out Jay Gould and Freeman Clark and putting in the real names. [Reads.] “It is claimed for Mr. Ellis that, in pursuing the course he did, he consulted leading New York bankers and was guided by their advice, but the Third Avenue Savings Bank’s default was too plain a case to require advice. He should have known that the bankers and brokers”—now here comes the spirit of the learned Senator’s argument addressed to this Senate—“he should have known that the bankers and brokers he consulted in 1875 were more interested in the institutions over which they had charge than in any savings bank in the city of New York, and of course they would prevent a panic, for that would probably lead to a run on the banks, trust companies, or brokers’ offices, that might prove disastrous to the interests of the stockholders. It was very natural, therefore, that Mr. Morrison, the president of the Manhattan Bank”—Jay Gould, of course—“Mr. Stewart, of the United States Trust Company”—Mr. Freeman Clark—“and Mr. Cisco, a private banker, should advise Mr. Ellis not to close up that insolvent savings bank, although Mr. Stewart, in his testimony taken before the Senate committee last winter, is reported as saying he would not have given advice.”

Now, I say, here the leading democratic organ in this State, in two days after the enunciation of these remarks by the learned Senator, takes these remarks and makes them the basis of its leading editorial article, *mutatis mutandis*, in regard to names, sends broadcast through the State that this advice that Mr. Ellis sought was an interested advice; that it was a course he should never have pursued, and in the language of the Senator himself, it was fatal to itself. Now, I make no imputations. I am only like the old Mr. Weller: “It is a mere coincidence;” mere coincidence that a speech of this character should have been made by one of his judges—a man that passes upon the merits of this case, and in a day and a half afterwards made the basis of a personal leading article in the central, controlling democratic paper of the State. Do not understand me, gentlemen Senators, that I charge the Senator from the Eighteenth with being a party to any such proceedings, or that he even was cognizant of it. I give him credit in the expression of his views for the utmost sincerity and hon-

esty of purpose ; but I noticed that the Senator asked these questions which led to the responses which were objected to by having them down, or purporting to be written upon a paper ; and the only way that I can account for it is, that the learned Senator must have left his notes upon the table, and some prying, mischievous reporter, after the adjournment of the Senate, has taken his paper and run down to Albany and made it the pretext of a partisan appeal to the democrats of this Senate.

Senator SCHOONMAKER — On what page of the testimony is that Argus article you refer to ?

Mr. MCGUIRE — I am asked, gentlemen, upon what page of the testimony this "Argus" article is. If there had been any objection by any member of this Senate to my reading it, that objection should have been taken before. I had supposed that counsel, in the discussion of a case, could call the attention of a Senate, or of anybody, by way of illustration of their argument, to facts not appearing in the testimony itself ; and, when there has been such latitude given here, when the counsel for the State has talked and taken up the time of the Senate for an hour — for over an hour — in reading and commenting upon matters not before this Senate, without interruption from the Senator from the Fourteenth, I ask him now what his motive is in interrupting me ? Is it conducive to a calm, dispassionate, deliberate state of investigation to witness the exhibition of such feeling upon the part of a judge ?

But I will answer the question. It is not in the testimony. I introduce it by way of illustration of an argument. If there be any impropriety in the act, I regret it ; but I regret still more the exhibition of a feeling of a judge that will in this way, after the thing is done, attempt to rebuke counsel for doing what he conceived to be a duty.

Now, I am going to call the attention of the Senate to another thing not in the testimony. If there be any objection on the part of any Senator, I hope he will make it now, and not after I conclude ; and that is to the question propounded by the distinguished Senator from the Thirty-first. Hearing no objection, I take it that leave or unanimous consent is granted.

Now I stated at the outset, that the questions propounded by the learned Senator from the Thirty-first ( Mr. Sprague ), should receive a respectful consideration, and they shall receive that consideration. I read : " Assuming that the Third Avenue Savings Bank was irretrievably insolvent in March, 1875, and that this was known at that time to its officers and to the Superintendent of the Bank Department and also assuming that the superintendent permitted the bank to continue its business until September, 1875, I understand him to urge as one reason for the delay, that in his judgment the effect of closing the

bank at an earlier period, would have been disastrous to other savings banks as well as to other financial interests. I suppose, therefore, that one of the principal and vital questions each Senator will have to determine in his own mind, will be whether the reason urged affords any justification of the delay in the action of the superintendent. To enable me to come to a conclusion upon this branch of the case, I should be glad to hear an argument upon the following questions:

FIRST—In continuing to pay its depositors subsequently to March, 1875, was the Third Avenue Savings Bank guilty of a fraud upon the United States bankrupt act, by making preferential payments, within the meaning of the thirty-fifth and thirty-seventh sections of that act, and, if so, does the reason urged by the respondent afford any justification for permitting such a fraud to be perpetrated?

SECOND. Were the payments to depositors made by the Third Avenue Savings Bank subsequent to March, 1875, in violation of the provisions of section 9 of article 1 of title 2 chapter 18 of part 1 of the Revised Statutes which in substance forbids any payment by moneyed corporations when insolvent or in contemplation of insolvency with intent of giving preference to any particular creditor over other creditors and if so does the reason urged by the respondent afford any justification for permitting such violation of the statutes?

THIRD. Was the receipt of deposits by the Third Avenue Bank after March, 1875, without any notification to depositors of its insolvent condition a fraud upon each depositor according to the law of this State as laid down in the case of *Nichols v. Painer* (18th New York Reports, 295), *Hennequinn v. Nailor* (24 New York Reports, 139), *Steward v. Strasburger* (51 Howard, 388), *Brown v. Montgomery* (20 New York Reports, 287), *Chaffee v. Flint* (2 Lansing, 81), and, if so, does the reason urged by the respondent afford any justification for permitting the perpetration of such fraud upon the depositors in said bank?"

Now, probably the first thing in order would be that I should call the attention of the Senate to the cases which my friend has cited as the basis on which he propounded these inquiries. I will call the attention of the Senate, without consuming any unnecessary time, simply to the original facts of the case, that the Senate can see what the courts in these respective cases decide, and their applicability to the questions propounded by the learned Senator. The first is in the Eighteenth New York. The Senate will get an idea of what this case is from a mere reading of its syllabus:

"A mere omission of the purchaser of goods to disclose his insolvency to a vendor is not a fraud for which the sale may be void.

When no inquiries are made of the vendee on the subject, and he makes no false statements, nor resorts to any artifice to mislead the



vendor, it is not, in general, fraudulent in him to remain silent in respect to his pecuniary condition. \* \* \* An honest though abortive purpose to continue business and pay for the goods is consistent with the vendee's knowledge of his own insolvency, etc., and the purchase is not fraudulent when made with such intent, though founded in delusive and unreasonable expectations.

Whether, however, the failure of the purchaser to disclose a marked and sudden change in his affairs for the worst, which he has reason to suppose unknown to the vendor, may not be a fraudulent concealment, rendering the sale void."

Now, the Senate can see what this case is. It is simply a man in insolvent circumstances purchases a bill of goods. He does not communicate the fact of his insolvency to the purchaser, but he buys them in good faith, expecting and believing that he will be able to pay for them, but before he does pay for them that belief and expectation proves to have been delusive; he could not pay, and then when being prosecuted for fraud in buying goods when he knew that he was insolvent, the Court of Appeals simply held in that case that the man had not been guilty of a fraud at all. Now, what purpose or relation, that case, or any thing decided or stated in this case which I have just called the attention of the Senate to, what it has to do with this; what principal in it effects this is more than I can say.

The next case is in the twenty-fourth New York Reports page 139. Now, this is a case a little different, and this case in the twenty-fourth of New York distinguishes the case in the eighteenth New York Reports, and distinguishes it in the particular which I will call the attention of the Senate to. "Though he"—meaning the purchaser of goods—"has neglected to disclose his insolvency, is not necessarily fraudulent; yet, if the purchase be made with a preconceived design not to pay, it is a fraud. Such design may be inferred by the jury from the circumstances and conduct of the vendee, not only in respect to the rule in question, but any other contemporaneous transactions." Now it will be seen that all that is decided in that case is that if a man purchase goods with the preconceived design not to pay for them it is a fraud. How does that affect the action of the Bank Superintendent? What act or what deed of the Bank Superintendent is determined or affected by a man fraudulently purchasing goods?

The next case is in the Twentieth New York Reports, page 287: "It is a fraudulent suppression, voiding the sale of commercial paper, for a vendor to withhold information that the maker's check upon the bank in which they kept their account had been protested, though the vendor's informant accompanied his statement with the expression of his opinion that the makers were perfectly solvent. The non-payment of a check, drawn by a commercial house upon its bankers,

is evidence upon the question of insolvency, etc., and it seems, if unexplained of itself, warrants that inference."

Now, this covers all there is of this, and, if the Senate will bear with me just a moment, I will state what the case is. A person in Buffalo, it seems, drew a check for \$300, and put it into the hands of a third man to sell at a discount, constituting him for that purpose his agent. The agent produced a person in negotiation for its sale. The man refuses to purchase the check, saying that he had already a check of the drawer, and it had gone to protest that day, but he regarded the drawer of the check as solvent. Then the agent produced a third person, and selling the check to the third person for \$297, the purchaser giving his note for \$297, and on the same day the drawer of the check made a general assignment, and the indorser of the check also, at the same time, went into insolvency. A suit was brought upon the note. The defense set up was the fraud of the agent in procuring the note for the check, in not apprising the maker of the note and the purchaser of the check that the other party had such a check; that a check had been protested on that day. And the court there held that it was the duty of the agent, when he knew the fact of commercial paper being protested, that that was an indication of insolvency, and that it was his duty to have communicated to the purchaser of the check the information that he possessed; and the court ultimately decided that the makers of the note were not liable.

Now, the 1st of Lansing. That is the nearest case on any question of a bank which the learned Senator cites, and that, it seems to me, is very foreign to any question that arises here. That is, if an insolvent who is carrying on business with knowledge that he can no longer continue it, and that his property must be surrendered to his creditors, purchases goods on credit without disclosing the circumstances to the vendor, his concealment thereof is equivalent to fraud, and his assignment of the purchased property for the benefit of his creditors will pass no title to his assignee, and this although the purchase was made in the course of the purchaser's business.

The same rule applies to a banker who, under like circumstances, receives deposits of his depositors — a banker in business on his own account being insolvent and intending to make a general assignment to his creditors, fails secretly. During the day he received a sum of money for deposit from one of his depositors who is ignorant of the insolvency, and he makes an entry thereof in his depositor's bank-book, and keeps the money in a separate parcel, labeled with depositor's name, intending to re-deliver it if he shall assign — that is, if he makes the assignment which he had in contemplation. He makes no entry in his own books except a memorandum in his cash-book,

beneath which he writes the depositor's name; and afterward on the same day, he assigns his property generally for the benefit of his creditors and delivers the parcel to the assignee with a request that he will, if he may legally, give it to the depositor. It was held that the assignee took no title to the deposit. Well, who would have thought that he did? Well, now, there is all there is of that case, gentlemen of the Senate. Under the circumstances which you have heard the marginal note read, a depositor leaves his money, having no knowledge of the insolvency of the bank; the bank intending to go into liquidation that day, the banker receives the money, intending to re-deliver it, if his intention could be carried out. He puts it into a separate parcel, indorsed with the name of the depositor, making no entry in his cash-book, and does assign that day, and the courts simply decide that the depositor had a title superior to the assignee of the bank. Now, this case I have called the attention of the Senate to. There are one or two others, but they are all of the same tenor. And I respectfully submit to the Senate that there is no principle of law in either of these cases, applicable to cases where a moneyed corporation receives money in contemplation of bankruptcy. But suppose there was. How is the Superintendent of the Bank Department to be affected by consequences of an omission to do a duty? Is a public officer, arraigned for neglect to discharge a duty, to be convicted or acquitted, according to the consequences that result? I take it that if the duty was omitted to be performed, although no serious consequences resulted, the officer is just as much amenable to law as if the most disastrous consequences had resulted. But Mr. Ellis, the Bank Superintendent, or any other public officer, if he has a duty to perform and that duty involves the exercise of discretion or judgment, he is not in any wise responsible for what follows by reason of the exercise of that judgment. Take the ordinary case of a man applying to a judge, say for an injunction to close the business of a corporation or an individual, and the injunction be granted, and disastrous results follow from the issuing of the injunction. In the end, why the court of review reverses the action of the judge below. Can it be pretended that the judge below, if he had the judgment, or exercised the discretion he exercises in refusing or granting the injunction that he should be responsible for the losses to the party enjoined? And so of these moneyed corporations. Any public officer that has jurisdiction or control over them, if he does his duty, and it may result in the winding up of such institutions or in their entire destruction, he is not responsible for it. If he omits to perform a duty by which insolvency ensues, or injury ensues, why he is not liable for the injury. If he is liable at all, he is simply liable for omitting to perform his duty disconnected with any other question. So,

in this case, the only question that can be considered by the Senate is, was there such a neglect of duty upon the part of Mr. Ellis, as calls for the intervention of this Senate to remove or retain him in his position? The consequences resulting whether there were fraudulent payments, whether money was received in contemplation of insolvency, can have no bearing upon the subject at all, and it seems to me that the learned Senator, upon reflection, cannot but see that the *gravamen*, the gist of the offense of a public officer is in the neglect to perform a duty disconnected from any results or consequences, from the alleged or assumed neglect.

Now, I desire to call the attention of the Senate for a short time to the general powers and duties of a Bank Superintendent, and his duty under the law in question. It has been assumed by counsel for the State that there is an impossible duty devolved upon the superintendent in virtue of the laws of this State. It has been assumed that the superintendent, although given by the Legislature general powers and control over these banks, still, in the exercise of that power and control, he has no discretion whatever, but that there is an unbending, rigorous rule of law, which requires him in his action towards banks to follow the precise line of these statutes, whether that line of duty which they say is pointed out, and which should be exercised whether that should result in the total wrecking of every bank in the State of New York, still, it his duty, and he must perform that duty. That is the position upon which this whole complaint against the superintendent is predicated. And assuming that that general statute exists, that no judgment can be exercised, no discretion invoked, that the superintendent has been guilty of a neglect of duty in not strictly and literally following what is termed by the prosecution as a mandatory duty imposed upon him by the statutes of the State. Now it becomes very important, I submit, therefore, Senators, to determine whether the superintendent has any judgment, whether he can exercise any discretion at all. And in connection with that, I submit, it becomes important again to determine whether, although he may have made a mistake, whether that mistake was willful, whether it was designed, or whether it was unintentional; and I make that remark in answer to the suggestions of the learned Senator from the Eighteenth, yesterday, who asked, if this line of argument in good faith, did not virtually repeal the statute of removal; I answer that it does not repeal the statute of removal, and I further answer that it does not afford a complete justification.

Senator STARBUCK — Does it restrict?

Mr. McGUIRE — No, sir. It does not restrict or enlarge, but it leaves the Senate to act upon the question as an original question, and here is one effect of it — if the Senate will bear a moment — are

you going to try an officer who in one case makes an unintentional mistake the same as you would an officer who purposely, willfully and designedly makes a mistake? Does the statute require you as Senators to remove a man because he is guilty of neglect of duty? Are your rights and privileges and duties the same as is claimed belongs to the superintendent? Have you no discretion? Cannot you determine the question whether it is unintentional or intentional or do you mean to say that the statute absolutely, mandatorily requires of you to remove a man if you find that he has been guilty of a mistake? I think that the Senate will see the distinction in a moment. It being within the discretion of the Senate to remove a man or keep him in his place as they see fit, all depends upon the views, the opinions, and determinations of the Senate having a discretionary power, an excusing power or a convicting power. Here is supposed a man brought before you charged with gross dereliction of duty, habitual dereliction of duty, an intentional dereliction and a willful dereliction. Why, you would not hesitate, having the power, under such a state of things to remove the man from his position. Here is another man who has endeavored honestly, conscientiously, and in good faith to discharge his duty. He is surrounded by a peculiar and embarrassing state of circumstances at the time. He concludes, whether wisely or unwisely, to take a certain line of policy. It is charged, and is the fact, that that line of policy was disastrous. He is brought before the Senate for trial. The Senate, looking back, taking a retrospective view of the action of the superintendent, the Senate say: "The superintendent at the time ought not to have acted as he did act, but he ought to have acted as I see now he ought to have acted in view of the light which I now have." The superintendent had not at that time the light which Senators now have. Here was an emergency into which he was thrown. Here were peculiar circumstances which I will refer to in a moment, in which he was called upon suddenly to act and he does act in good faith with an honest purpose, to discharge his duty, without any intent to violate it, without any intent to disregard the law. But you say, Senators, that, while he acted in perfect good faith and in harmony with the dictates of his judgment and consistently with the circumstances as he saw them — is there no distinction between such a man and a willful, intentional disregard of his duty? Do not then good faith, good intentions, exercise of judgment and discretion enter as elements into the consideration of this case? I do not say, and the learned Senator, will not understand me as saying or going to the length, that it amounts to a perfect justification. Being a matter of discretion with the Senate whether they will remove, or whether they will not remove

then the good faith, the good intention, becomes an important element in the consideration and discussion of the question. As has been said, where is there a public officer of this State that has not erred? Let me call the attention of the Senate to one single illustration as showing what is the effect of this to me barbarous doctrine, that a public officer who, unintentionally, makes a mistake in the performance of his duty is to be himself convicted and removed simply for that mistake. Take now this case. For a period of forty years, there has been a fund in this State known as the United States Deposit Fund, which this State received in trust and holds in trust. It has been distributed under direction of a statute to the various counties appointing commissioners to lend it out, and requiring those commissioners to report making it the duty of the Comptroller of the State to keep watch of that fund, and to see that the trust — and it is a trust and nothing else — received by the State from the United States, that that trust is properly executed. From that day to this there has not been a Comptroller of this State that has performed that important duty until now. It is known, and every Senator around this circle knows the fact, that that fund has been purloined, squandered in every county of this State, the greatest frauds and irregularities being practiced by these commissioners. Funds were raised and never accounted for. Mortgages allowed to stand, which they had taken, which have been paid, but uncanceled, and those mortgages have been returned as vouchers. I say that every Senator from the rural districts knows, at least, that such a state of facts exists. But never, never, until Mr. Olcott took charge of the Comptroller's office, was there ever an attempt to perform that statutory duty by the Comptroller. Who blames former Comptrollers as guilty of culpable negligence? They might have been, but who ever dreamed that they should be arraigned and tried for this neglect of duty? I only refer to that as the latest instance to show you that these public officers, with multiplicity of duties imposed upon them by law, must necessarily omit the performance of some; and when the power is given to the Bank Superintendent to supervise some 200 banks or more of this State, with a capital of \$345,000,000 scattered all over the State, to hold him accountable, because some clerk has stolen money, because a second mortgage has affected some bank, because banks have fraudulently failed, as the interrogatories propounded by Senators seem to indicate. Why, it is a preposterous rule to apply to any public officer; and there is not a public officer in the United States who, with such a rule, could stand criticism a moment — not one. Then why select out the Bank Superintendent from all the rest? What is the object and what is its purpose? Why, the counsel for the State tells us, that here is a peculiar institution; here are savings banks where the savings of the poor are accumulated, and

that the Legislature has committed that sacred fund to the watchful care and superintendence of the Bank Department. Now, the original and primary purpose of a savings bank undoubtedly is, to hoard up and save the small earnings of the poor ; but are they to this day, are savings banks used for such purposes to-day, as a general thing ; or are they used for other purposes ? But it makes no difference probably for what purpose they are used, whether by the rich or by the poor ; whether they are used by the rich, who put in their money in the name of wife, father or mother, to escape taxation or not ; probably it makes no difference ; but when these men who have given all their own relations and their wives' relations names, and put money thereon into savings banks, and get a law from the Legislature that savings banks should not be taxed ; when these men create bad ideas and make false representations, it is time to stop and inquire whether the cry is real or simulated, or whether it is got up for a purpose. But it is the duty of the superintendent to look after the savings banks. So it appears. The law imposes a duty upon him ; and what is that duty ? Is that duty a special one, or a general one ; and what course must the superintendent pursue in regard to these savings banks ? Must he pursue a course which may be beneficial to one bank, but injurious to the others ? Is this savings banks system a whole system which is under the care and supervision of the superintendent ? Is the superintendent for every infraction of law to act, to coerce, banks, or can he fail to act in case of infractions of by-laws, providing no injurious results follow ? Now, I assume, if the Senate please, that the superintendent's duty is to watch the entire savings banks' interest of the State ; that he looks at it as a system, and not apply one system to one bank, and another system to another. He must preserve and protect the harmony of the whole, and he must not injure them all to benefit one. That, if he should to-day find a bank to be insolvent, it would be primarily his duty to close that bank, I concede ? providing that there was no hope—no reasonable ground to believe that that bank could recover from its embarrassment or insolvency. I concede that ; and provided further, that he would not be shaking, shocking, and injuring the whole system by the exercise of the power in closing up that particular bank. It, therefore, becomes important to determine what the superintendent should do when he finds a bank embarrassed under peculiar circumstances ; whether it is his duty, as claimed by the counsel for the State, to proceed summarily to coerce that bank—drive it into insolvency, when he knows—or, if he don't know, he has reason to believe, it is his mature judgment, that a coercion of that bank into insolvency, will drive a dozen others into insolvency. Now which should he do, I submit to the Senate. Should he protect the many or the one, or should he protect the one and de-

stroy the many ? The case has been presented here on the part of the people, that it was the bounden duty of the Bank Superintendent, the moment he found the Third Avenue Bank or any other bank in a position which indicated danger to its depositors, or any report warranted the opinion that it was or might be insolvent, he should force the bank into liquidation regardless of its consequences upon any other savings bank or any other interest of the city or country. Now, I submit to the Senate, that it is not the construction or view to be taken of the savings bank system of this State or the powers or duties of the superintendent. The power and duty of the superintendent is to watch all ; to protect all, to see that the interests of all are protected, as far as an equitable, just and proper administration of his department will do ; that he has no right, when he finds a bank embarrassed or leading into the roads of insolvency to arbitrarily close that bank, when he knows that ten or 100 times as many depositors would suffer by reason of his acts ; and, if he attempted, and such a result should follow as it appears would have followed in this case and did follow at a more favorable period, that then he would have been justly amenable to this Senate, to the country and the depositors, for a maladministration of the powers conferred upon him by law. I submit to you Senators, that if Mr. Ellis in 1875, at the time of that panic, had proceeded in the coercion of the Third Avenue Bank into insolvency or liquidation, and a run, a shock, a panic had followed in the financial circles of New York, and that he knew or had reason to know that it would follow, that he would have been justly chargeable, and that he should have been made amenable to you for an arbitrary, unjust, unwise maladministration of those powers.

Now we have the converse of the proposition ; and, in case that I suppose, is there any Senator around here, that, if Mr. Ellis had pursued the course which they now say he ought to have pursued, but what would denounce and properly and justly denounced his action ? But, as I say, we have the converse of the proposition. He did not pursue the course which some Senators now say he ought to have pursued. It has been argued by my associate and submitted to you—and I do not propose to enlarge upon that topic—that the superintendent was justified, in view of all the surroundings of the case, the condition in which he then found things existing, the then sensitive, tremulous state of the money market and financial institutions at that time, not to still further add to that excitement, not to still further derange the interests which are so important not only to banking interests, but the whole business interests he was forbearing to act under such circumstances, instead, gentlemen, of being subject to your censure, I submit to you as candid, reasonable men, if he is not entitled to your commendation. Instead of Mr. Ellis being arraigned



here and put upon trial before the people of the State, when he averted—and there is no doubt about the facts of this case—when he averted a great financial disaster in the city of New York, instead of being arraigned here as a *quasi* criminal, he ought to receive the commendation not only of the city of New York, through the Senate, but of every other man, who desires to perpetuate the stability of our financial institutions and financial interests. And it has struck me, gentlemen of the Senate, as remarkable, from the commencement of this trial to its close, that in the year 1875, commencing early in that year, when we could not pick up a single newspaper but that we saw that A, B, C and D, all over the United States, not confined to the State of New York, not confined to the city of New York, in all our financial centers, you found that A and B had failed with one, two, three, five or ten millions of liabilities. You found a corporation failing; here you found a bank forced into liquidation; there you found your financial interests unsettled and unstable; you found the commerce of your country paralyzed and your business prostrate; you found capital unemployed and labor unrewarded, every thing sensitive, trembling, ready to go down and follow in the general demoralization. You found still further, gentlemen, that for years and years before that time, against the earnest and urgent protest of every Bank Superintendent of this State from 1857 down, had called upon the Legislature not to exercise its power by constantly creating new savings banks in different localities of the State, you found in 1875, and you know that we have passed through a period of inflation; that while speculation had pervaded not only every department of the government but every institution, every corporation, and reaching down to the household of the private citizen himself; you found that what ought to have been a dollar had been magnified by this inflation into \$100. You found these savings banks partaking of the general demoralization; commencing away back to 1867 and 1868, you have found the Legislature incorporating these institutions year after year. Sudden fortunes they supposed could be made. They invested in securities may be of doubtful propriety, but then in the inflation periods of power, then with inflation prices, they could get dollar for dollar. Their vaults became filled with this kind of securities. They ran along with prosperity year after year from 1863 and 1864 down to 1875. Then came the culmination of all the financial policy of our State and government. Then came the collapse! Then was shown the rottenness, the uncertainty of the securities that had been taken, and the pretended prosperity of the country, and at this time, with this general crash, with this general collapse, where corporation after corporation, supposed to be solvent, was tumbling, crumbling into ruins, where individuals supposed to have fortunes of millions were

converted into paupers in a day ; at *that* time, commencing in 1875, Mr. Ellis was the Superintendent of the Banking Department ; and all of the wrongs, all of the faults, all of the evils consequent upon inflation, culminated in the year 1875. Some of it reached these savings banks, and, with this accumulated evil of years' growth, you ask Mr. Ellis, as Superintendent of the Bank Department, to apply an antidote in a day when you find things so uncertain, when you find that the very fabric of all your financial institutions is being shattered and is crumbling. Grave Senators sit around here and put questions, " Why didn't you make the thing more rotten ? Why didn't you bring a crisis quicker by going into that Third Avenue Bank in a day and closing it up ? Why, gentlemen, you are *here* reapproaching—this may not seem proper for the public ear—but you are here reapproaching the days of real prosperity. You are getting down to the rock-bottom ! You are getting at the time when a dollar is a dollar. You are getting at a time when economy is going to be the order of the day, instead of reckless extravagance. You are getting at the time when one dollar's worth of property is just one dollar, instead of \$100 or \$1,000. You, to-day with this returning, abiding prosperity before you, sit here gladly to-day and look back upon the shaking, unsubstantial condition of things in 1875, and 1873 and 1874, and you say here, some of you to-day, that Mr. Ellis' conduct on that day should be made to conform to the rule and system which you yourself adopt, when you are no longer surrounded by the unsubstantial views of that day. That was the condition of things, I say, that Mr. Ellis found in 1875. I adjure you, Senators, not to look at this question as you now see it, probably as Mr. Ellis sees it, probably as every other man sees it, but look at this question as near as you can—and you cannot get close to it, but get, gentlemen, as close as you can to it, to the circumstances that existed at that day and the time when Mr. Ellis was called upon to execute his official powers. Then see if you can say that Mr. Ellis, at that time, surrounded as he was, situated as he was, did commit a mistake or not. We can all, after a thing has transpired, we can all look back and comment and criticize and be very wise. We can all say, " I told you so,"—and how many persons in life, after the happening of an event, tell you, " I told you so," when probably they never so dreamed or thought of the thing before in their existence. We can look back over the acts of our fellow-men, and assume to be so much wiser than they. We are not to govern men's actions. It is an unwise, imprudent rule to govern men's actions by hindsight. They have not the light, the benefit, the knowledge of the retrospective sight. Their sight is in the future. *They* are called upon to peep in futurity. *You* are looking back to see what the then future may have brought forth ; and the same rule, Senators, I

respectfully submit to you, should not be held to have guided Mr. Ellis at that time as appears to you now. His powers should have been exercised in the light he then had.

Again, is there no restriction, no limitation upon the power of the Bank Superintendent? Is he an autocrat in his department? Is he a mere machine to exercise and discharge certain duties which the statute has devolved upon him? Has he no judgment, no discretion, to exercise at all? Why, gentlemen of the Senate, to carry out the legitimate results of the proposition of the counsel, as has been presented by them here to you, you would have a tyrant in that Bank Department, with more irresponsible power, with more power for mischief than the most irresponsible despot of Europe. What is there to restrain him? What is there to prevent his action? Or, what is there to prevent his going into any bank in the State of New York and virtually wrecking it? I ask Senators to look at it. It has been claimed here, and the statute has been read, the statute has been commented upon that it is the duty of the Bank Superintendent, for every irregularity that he discovers in a bank, for every violation of law or its charter, that he must institute, at once, coercive proceedings; in other words, that he has the power to be the most complete bank wrecker that this or any country ever saw, and rivaling in power, rivaling in magnitude the most successful railroad wrecker of the age. Is there a bank in this State but what violates its charter? I will not even except the well-managed bank of my friend the Senator from the Tenth—not an intentional violation, but I say that there is not a savings bank in this State but what in a greater or less degree violates some provision of law, or its charter; and were, it necessary in this case, instances might be cited.

Now, it is claimed that when that violation takes place, it is the mandatory duty of the superintendent to step in and use coercive proceedings. See what a dangerous power would be committed to any superintendent, placing these vast interests—\$350,000,000 in these savings banks deposits—committing that entire fund to his unrestrained will or caprice, and keeping himself all the while in the line and spirit of the statute. I say that the Legislature never intended any such unrestricted, unlimited power. What the Legislature intended was to give him general powers, giving him a discretion and judgment as to how those powers should be exercised to have a proper and a fit man at the head of the department that would exercise those powers wisely and in the interest of the fund committed to his charge. The proposition is shocking, pernicious, untenable, that any public officer of this State has not a judgment to exercise, has not a discretion to use in the performance of his official duty.

On motion of Senator Woodin the Senate here took a recess until 4 P. M.

SARATOGA SPRINGS, *August 16, 1877*—4 P. M.

The Senate met pursuant to adjournment, a quorum present.

Senator JACOBS offered the following resolution:

*"Resolved, That the Senate take a recess at six o'clock until eight o'clock this evening, and remain in session until all argument of counsel is closed."*

The resolution was adopted.

Mr. McGUIRE resumed his argument on behalf of the respondent, as follows:

Mr. President, I was calling the attention of the Senate at the time of the recess to the condition of public affairs at the time the condition of the Third Avenue Bank was brought to the attention of Mr. Ellis; that the condition of this bank was brought to him at a time when corporate and individual bankruptcies stared the public in the face; when public securities were being shaken and depreciated in value; at a time when there was insecurity everywhere, when the whole financial structure of the country seemed to be shaken to its very foundation; at a time as far as the moneyed interests of the country were concerned, when "shrieked the timid and stood still the brave;" and it was at such a time as I called the attention of the Senate to this forenoon, that Mr. Ellis was called upon to act in regard to this Third Avenue Bank. There were other considerations which necessarily influenced the action of the superintendent at that time. It was at the time when the bravest, and, I might add, the most earnest man, would have hesitated long before he would have taken a step which would have plunged the financial world into the disaster which was predicted and might necessarily have followed.

But, in regard to that bank, Mr. Ellis had other lights to guide him at that time and in previous years. He knew that this bank, the Third Avenue Savings Bank, had been placed under the scrutiny of a judicial investigation, and he knew and realized that not only the courts, but his predecessor had recognized the weakness of the institution, and had taken measures to put it upon a basis that would be conducive to its ultimate prosperity. Now, Senators, who was the predecessor of Mr. Ellis in this department? He may be unknown, personally, to many of the Senators, but a gentleman known to me and to some of the Senators sitting around this circle, and it gives me pleasure to bear witness to the unquestioned integrity and the financial ability and the experience in banking affairs of Mr. Howell, who preceded Mr. Ellis in the administration of the affairs of this department; a man who was born in a bank, who was bred in a bank, came to manhood, managed the affairs of a bank, and is still engaged in managing the affairs of one of the most successful banks in the State

of New York. The experience of banking acquired through a lifetime of industry, of probity he brought into the administration of the affairs of the Banking Department. Mr. Ellis, therefore, was apprised upon entering this office, of what a gentleman of experience and ability and unquestioned probity had done and performed in reference to this Third Avenue Bank, and it is quite appropriate, at this time, that I should call the attention of the Senate to some of the actions of Mr. Howell, while in the department, as to the bank under consideration I do it for the reason that Mr. Ellis' conduct as a bank examiner has been assailed not only by the counsel who represents the State in this prosecution, but as far as questions propounded by certain Senators can indicate a line of thought which may be prevailing their minds, that there was a wrong in Mr. Ellis in allowing this Third Avenue Bank to supply its deficiencies of assets by taking the personal bonds of trustees; and Senators evidently, or at least some of them around this circle, have confounded the taking of a bond to supply deficiency and an investment of the money of a bank in a personal bond. Why, there cannot be any pretense in this case that a dollar of money in any savings bank has been invested in a personal bond, either under Mr. Howell, Mr. Schuyler or Mr. Ellis, but from some unfortunate and unforeseen circumstances, by what the derangement of the money-market has produced, the fall of securities, the shrinkage in real estate, the bank did not realize a sufficient income to pay its depositors; and whenever that deficiency arose or occurred caused by any unforeseen contingency, the officers of the bank put in their personal bonds, by which they agreed to pay to the bank the apparent deficiency.

And I wish now, at this time, to disabuse the mind of any Senator, who for a moment, has entertained the thought that any superintendent of the Bank Department, the present or prior one, has ever tolerated a practice of allowing a trustee to take the money of the institution and deposit in its place his personal bond.

But in regard to the Third Avenue Savings Bank, the first bank where it appears this practice was resorted to, of taking personal bonds, Mr. Howell, in the exercise of what he considered a discretion what he considered in the light of his duty, as a public officer; finding this bank emerging from all of its troubles with its depositors getting out of a quarrel with its trustees, passing safely through the ordeal the court; but that there is a deficiency of \$115,000 in its assets; Mr. Howell, to enable the bank to get along, suffers and permits its trustees to deposit in the Bank Department these bonds, to meet and supply this deficiency. And permit me here, Senators; to say, how often the best of us can be mistaken. You look at the message of his Excellency, the Governor, asking you to investigate the conduct of Mr.

Ellis; and there the Governor makes his charge against Mr. Ellis, in regard to this Third Avenue Bank, that he, Mr. Ellis violated his duty as a superintendent, in allowing the trustees of this bank, to bond this \$115,000. The Governor did not make that misstatement on purpose. The Governor honestly thought it was true, but you know, every Senator around this circle knows, that there is not a word of truth in it, that Mr. Ellis ever permitted this bank to file these bonds, but they were filed by Mr. Howell. Now, I wish to call the attention of the Senate to Mr Howell's report upon that subject. By law, gentlemen, the Superintendent of the Bank Department is required to report to your body annually, the condition of every savings bank in the State, and, it is fair to presume, whatever the practical result may be, I must assume at least that you, as Senators, have discharged your duties heretofore, and performed the duty that the law cast upon you in watching over and endeavoring to see that these savings banks had been honestly administered, and that the Bank Department as well as the trustees of the institution have honestly performed their duty.

In 1873, Mr Howell communicated that fact to you, that he had allowed this bank to file in the department at Albany, these bonds to meet a deficiency. You knew it—I do not mean *you* as individual Senators—but you knew it as a Senate.

The law charges you with knowledge. It does not presume that when the legislature takes this trust, this sacred trust, that has been talked about, under its charge and under its protection, and requires the Superintendent of the Bank Department to communicate information annually to it of the condition of the banks, that the Legislature neglect its duty. Then, in 1873, the Senate of the State of New York, knew that about that time Mr. Howell had taken into the Bank Department personal bonds to supply a deficiency. And the spectacle gentlemen, is witnessed to-day, that Mr. Ellis is put upon trial for allowing personal bonds to remain in that office. But let us see what Mr. Howell did communicate to you and what he left upon record for the guidance and information of his successor. He says, in speaking of the Third Avenue Bank: "Two gentlemen, one, upon the suggestion of the trustees, applying for the investigation, and the other upon my suggestion cordially approved by the applicants, were appointed to the work. At the close of the examination, which was prosecuted during a period of nearly five months"—I wish to emphasize that remark, I wish to call the attention of the Senate to it. Here are two experts, one appointed by the bank, and one appointed on the recommendation of the Superintendent of the Bank Department, to examine into the affairs of the Third Avenue Bank, and those two gentlemen, Keyes representing the State, an experienced bank man, competent in the affairs of the Bank Department, and another gentleman

representing the bank, were engaged for a period of five months, diligently laboring to ascertain its condition; and here, from interrogatories put to witnesses upon the stand, from intimations of Senators, gravely made, it is sought to make Mr. Ellis chargeable, because every bank out of 160 savings banks in this State was not examined at least once in two years, with a critical accuracy that could admit of no mistake. Why, if it takes two gentlemen five months to examine one bank, how long is it going to take to examine them all? As you could not be moved by a consideration that, in a subsequent winding up of these banks, there were irregularities discovered, that there were frauds discovered, perpetrated by a clerk unknown to the trustees themselves—are you going to require of the Superintendent of the Bank Department an intimate knowledge of every detail incident to the conduct of a savings bank?

\* \* \* “From these reports, after a careful perusal and consideration of them, I derive the following as embodying substantially the state of the case, as stated by Mr. Howell :

FIRST.—The interrogatories complained of, which affected the financial standing of the institution, related to transactions of more than three years previous, and consisted in having made loans under the ‘available fund’ clause of the charter, upon the stocks of the Atlantic Mail Steamship Companies, which suddenly depreciated in value, entailing a heavy loss upon the institution, impairing the surplus, but not as it was believed, to the extent of wholly absorbing it.

SECOND.—There was no evidence in the mass of testimony submitted that established the fact that any trustee had any personal interest to serve in effecting these loans, or that they were effected with any other purpose than to keep the available fund in a productive form for the interests of the institution.

THIRD.—The other irregularities brought to view were, some of them unquestionably improper, others of simply doubtful propriety; but there were none of a nature to affect the financial integrity of the institution, and none that a simple direction from the superintendent would not serve to correct, provided they were found by him to be a part of the policy of the management at the time the examination was made.

FOURTH.—It was not shown that such alleged irregularities were continuing at the period of the examination, but, on the contrary, it appeared that they had been superseded by what seemed to the superintendent to be a prudent and conservative policy; and it further appeared that the unwise policy that more than three years before had resulted in the losses referred to, was thereupon wholly abandoned, and no attempt even at its resumption had ever been made.

FIFTH.—Both of the examiners, in striking a balance, found the liabilities in excess of the assets ; but not to an amount, however, which, in my opinion, would justify me in placing the institution in the hands of a receiver. On the contrary, I was clearly of the opinion that, with the change of policy in the management of the bank which had then been inaugurated, and with a reduction of salaries and other expenses, which I was assured by the managers would be effected, the deficiency in the assets would soon be made good by the earnings of the institution, thus saving to the depositors the expense of closing up its affairs by a receiver. I have since seen no reason to change this opinion, believing now, as I did then, that the course pursued by me was for the best interests of its creditors. I am confirmed in this opinion by the fact that a justice of the Supreme Court has recently refused to grant an order for the appointment of a receiver, after the bank had sustained a run upon it for a number of weeks, upon the ground that the ‘insolvency of the corporation had not been shown, nor did it appear that default had been made in paying the plaintiff as a creditor.’ I have no reason to believe, if such an application had been made through me, that the result would have been different.

Whatever may be the final result of the protracted effort to force it into liquidation, I stand justified in my own judgment and conscience in the attitude I have taken in this matter, in refusing to become a party to the effort to destroy an institution which had so long and acceptably served the public, and which, in my judgment, had within itself sufficient resources for usefulness in the future.

Respectfully submitted,

D. C. HOWELL,

*Superintendent.”*

The learned counsel for the State in the opening of this case to the Senate, and in his argument to the Senate the other day, called your attention to the fact that the Governors of this State had urgently and repeatedly called the attention of the Legislature to more sufficient protection of the interests of these depositors. He called your attention to it for the purpose of showing what importance Governors attached to this savings bank interest.

Well, gentlemen Senators, the Governors of the State have done so, Governor Hoffman, in his messages, repeatedly called the attention of the Legislatures to providing more certain safeguards against improvident and reckless transactions in savings banks, Governor Dix, did the same thing. But what became of the recommendations ? But it did not stop with the executives. Mr. Howell, if you will



take the pains to read his report, has urgently urged upon the Legislature to interpose its authority to strike out some of the vicious and pernicious clauses in these charters, which, as he predicted, if allowed to remain, would result in disaster and injure not only the banks, but the banking system itself. There was not a message that Mr. Howell sent into your body but what he called your attention to what he designated this pernicious "available fund" clause, and during the administration of Mr. Ellis, he has repeatedly every year urged and urged upon you, gentlemen of the Legislature, to strike out, amend, take away from those banks the power to do mischief. You have passed the recommendations of the various Governors of the State, the recommendations of the Bank Superintendents unheeded, and because by virtue of your legislation, because by virtue of favoritism in charters passed at a certain period of our history, where wrong has been perpetrated, where speculation has been prevalent, where disaster has fallen upon the banks, you, because you passed unheeded what the Governors asked you to do, what the superintendents asked you to do, you are here gravely putting this man upon trial, because the disasters followed that they told you six years ago would. Is the blame for all these misfortunes to be put upon the Bank Superintendent? He does the best he can; but he has no control over improvident and vicious provisions and clauses in the charters. He has no control, or had not prior to 1875, nor anybody else, over the officers of a bank or over its mode of transacting business, unless it was made to appear to him that its mode was unsafe. As long as they kept within the line of the letter of the law and kept up an appearance of safety in their institution which would deceive him or any other prudent man, he had no right to interfere, although the seeds of dissolution were being germinated in its management. I submit, Senators, upon this question that it is capable of demonstration, logical demonstration, that all these evils which resulted to these banks, instead of following from any action of the superintendent, have been produced by the vicious legislation of the State itself. I submit to you, gentlemen, whether you are not wrong in the consideration of this question, in attempting to throw the blame of absence of legislation or wrong legislation upon the shoulders of the superintendent who happened to hold and be the incumbent of this office at the time the crash came. But I will proceed with the proposition which Mr. Howell submitted to the Legislature and which Mr. Ellis knew. He says: Second. There was no evidence in the mass of testimony submitted that established the fact that any trustee had any personal interest to serve in effecting these loans, or that they were effected with any other purpose than to keep the available fund in a productive form for the interest of the institution. The other irregularities

appearing however were questioned, some of them improperly, for it was not shown that such alleged irregularities were continuing at the period of the examination but, on the contrary that they have been superseded by what seemed to the superintendent to be a prudent and conservative policy."

I wish the Senate to bear in mind specifically that here were irregularities, here were departures from law, here were acts not in conformity with its charter, but the superintendent says to the Legislature, that although these acts were such, they had been superseded and a prudent and conservative policy substituted in their place. He therefore condoned irregularities that previously existed when he became satisfied that the bank meant to transact its business, according to law and in conformity to the terms of the charter. Why, I have heard it suggested around this circle, that the superintendent had no right to condone any irregularities; but the moment that the irregularity existed, the moment a deficiency appeared, he should show no leniency to the bank, he should make no attempt to settle that deficiency, but must wind up its proceedings by coercive provisions of law and consign it to the tender mercies of a receiver. We have all heard tell in our young days about lambs being consigned to the tender mercies of a wolf; but those mercies are tender compared to what the depositors in a savings bank suffer when their assets get into the hands of a receiver.

But, in regard to these bonds, Mr. Howell informs the Legislature that he had permitted this bank to settle this deficiency by the substitution of these personal bonds, for \$115,000, and in 1872 the Legislature and people of this State were informed by Mr. Howell that to enable this bank to continue business and to put it upon a safe, firm basis as he supposed, that instead of putting money in the bank they might substitute in its place their personal obligations. And he concludes: "I have since seen no reason to change this opinion, believing now as I did then, that the course pursued by me was for the best interest of its creditors. I am confirmed in this opinion by the fact that a justice of the Supreme Court has recently refused to grant an order for the appointment of a receiver after the bank had sustained a run upon it for a number of weeks upon the ground that the insolvency of the corporation had not been shown, nor did it appear that default had been made in paying the plaintiff as a creditor. I have no reason to believe, if such an application had been made through me that the result would have been different."

I have no reason to believe that if such an application had been made through me that the result would have been different.

One of the learned Senators, while the subject was under consideration and the case of the Third Avenue Bank was being read, asked me

to explain why the Attorney-General did not make an application for a receiver, indicating thereby that if that application for a receiver had been made by the Attorney-General, at the request of the Superintendent of the Bank Department, that the court would have put the bank in the process of liquidation. Here we have Mr. Howell at the time saying, "I have no reason to believe if such an application had been made through me that the result would have been different. Whatever may be the final result of the protracted effort to force it into liquidation I stand justified in my own judgment, and conscious in the attitude I have taken in this matter, in refusing to become a party to an effort to destroy an institution which had so long and so acceptably served the public, and which, in my judgment, had within itself sufficient resources for usefulness in the future." Why, Mr. Howell, it seems, had the temerity to assure the Legislature that he had a judgment upon the subject that he had a judgment to exercise, and in the exercise of that judgment he pursued the course he did. Who questioned his judgment at that time? Who doubted but what he had a judgment, but what he had a discretion to fix up the affairs of this bank? And here the main and only question we are litigating to-day is the main and only question, it seems, which is to be submitted to your consideration, has the superintendent any judgment, any discretion, to exercise? If he had, if the question be answered in the affirmative, that the superintendent has this judgment, has this discretion, where do you get the power to supervise it, where does the power exist in any department of this government to exercise a supervision over the exercise of a judgment by the executive power of the government? If the Legislature delegates to the Bank Department Superintendent the right to exercise his judgment in regard to the management of the affairs of a bank, let me ask you, Senators, where you get the right to supervise that judgment, to say that he should exercise it in accordance with what you say your judgment is. If such a power exists, that one department of the government can supervise, can control the exercise of judgment over a co-ordinate branch, it is a power unknown to me, and it is a power that would be dangerous to the exercise of power in any government. You may say, undoubtedly, when a proper case is presented here that a public officer has corruptly exercised the duties of his office, you may say, if you please, that a public officer has neglected to perform a duty at all, but the question under consideration is above, beyond the bare naked technical question of the corrupt exercise of power or the non-exercise of power, but the question is — the paramount and pivotal question in the case is — when he does exercise that judgment can you say that that judgment was wrongly and improperly exercised, unless you couple with it a corrupt purpose and intent in its exercise and discharge? Why, it is

remarkable, must strike every mind as remarkable, that when there is a distinctive co-ordinate branch of the government created in this State, and a person is selected by the Executive, with the concurrence of the Senate, to discharge the duties of that office, large discretionary powers committed to him, the exercise of judgment necessarily to be used by him, that a power exists somewhere else to supervise, to reverse, to overrule the exercise of his best judgment. It is remarkable, and it is one of the remarkable things incident to this investigation. If applied to the Superintendent of the Bank Department where is the limit to the power? Why not apply it to the judicial as well as to administrative officers? When you commit the exercise of discretion to one officer, and he exercises it, why not attempt to reverse or overrule and denounce the manner in which the exercise of the discretion has been made? When you concede that the discretion was honestly and in good faith exercised; when you concede that the most matured judgment of the incumbent has been used in the discharge of his official duties — when you concede *that*, you concede the entire case, provided you admit that the officer has any judgment or discretion at all. There is no Senator sitting around here but what can see the impropriety of this body—one branch of the Legislature—attempting to say that a public officer has not exercised his judgment in the manner that each individual Senator would have exercised his, if called upon to act. There would be no safety, no certainty, in the administrative or the judicial functions of the government. When discretion has once been vested, and once been exercised, there the act must stand undisturbed, and the officer is not amenable to punishment from anybody, unless he falls within the condemnation of corruptly exercising and discharging the duties committed to him by the law. Now, I have stated that Mr. Ellis had this document before him at the time. In addition to all other matters, he had the letter before him of Mr. Reid, in 1873. Mr. Reid apprised him, in effect, that the footing of the bank was more favorable and desirable at that day than it was when Mr. Howell left it, and when Mr. Howell attempted to impart to it life and vitality. But time passed on. From 1873 to 1875 — I address the question now to each individual Senator — where is there a particle of evidence that there was any wrong committed by a single officer of the Third Avenue Bank? What was there committed in those two years calling for the exercise of any extraordinary power by the superintendent? Is it alleged or pretended that the officers of the bank were guilty of any maladministration, any malfeasance? Is it alleged or pretended but what, in the strict sense of the term, the bank was conducting its business honestly? Is it pretended that bad securities were being substituted for good securities, injuring the deposits, the security of the deposits?

Now, I am safe in saying, the record will bear me witness in the truth of the statement I make to the Senate, that there was not a change of a dollar of securities of the Third Avenue Bank from March, 1873, to March, 1875, with this exception: The bank had \$175,000 of Kansas bonds. Those bonds they sold and disposed of in January, 1875. They sold and disposed of those bonds, with the exception of \$25,000 of them, after their annual report to the superintendent. You look and see their report, gentlemen Senators, of January, 1875, that they then had “\$125,000 of Kansas bonds,” and we have the testimony of Mr. Sellers, clerk of the receiver, where the entry appears from the books, that on the fourteenth day of January of that year \$100,000 of those bonds were sold at par, and in the following June the remaining \$25,000 were sold; and, in the month of March, a few days before Mr. Reid’s examination of that year, this bank had bought and put in there \$55,000 of Tennessee bonds. That, gentlemen, is the only change of securities that took place in that bank from 1873 to 1875.

Then, what was the cause of the disasters to the bank? It is bonds, depreciated bonds of other States—depreciated in value. The repudiating process was going on in southern States, and the interest was not paid, no income was realized, and the bonds had but little, if any, market value. The bank had got loaded down with real estate, between \$500,000 and \$600,000 of real estate, honestly worth it at the time it was purchased; nobody questioned it, but what, at the time it came into the hands of the bank, that the real estate was worth what it was put at in the assets of the bank. But, in 1876, when this receiver closed up the affairs of this bank, and forced this real estate upon the market, the whole quantity, the vast amount of real estate held by this bank was sold for the paltry sum of \$137,000; when, three years ago, one house and lot on Fifth avenue alone would have sold for that sum. But it was put upon the market by this bank receivership, when the receiver himself has to swear that there was no market for it, there was no cash market value for real estate at the time that he sold, still he forced it upon the market, and the whole of it, Tarrytown land and a dozen pieces of property in the city of New York, brought the sum of \$137,000. It has got into this case, for what purpose it has got into this case nobody can judge; at least I cannot now, but it is here. But that was the cause of the disaster, the large shrinkage in the value of the real estate, and it is claimed that Mr. Ellis is responsible for not foreseeing at an earlier day, that these securities would depreciate, that this real estate would shrink in value, and close up the bank more speedily than he did. So as what? So that there should not be a loss? Why, there is no pretense here there would not have been a loss, there is no claim here but that if that bank had been closed in March, 1875, the

loss would have been as great as it is now. I have not heard an intimation from the counsel for the State that there would have been any change, any difference, in the loss to the depositors of that bank if closed in March rather than in September. On the contrary, Senators, the proof is in this case that there was a gain to the depositors by means of the delay, and that gain consisted in the appreciation of the State bonds; bonds that Mr. Reid put in his examination in March, 1875, at a certain price; when this receiver sold them, he sold them at an advance of from eight to ten cents. Then, what is the complaint? The complaint is, that if the bank had closed in March, 1875, the then depositors would have lost, the then widows and orphans, who have been so tremulously referred to here, would have lost. But by allowing it to continue to September, why, some of these widows and orphans got their pay, and a new set of widows and orphans got in and lost. That is all there is of that. And because a new set of persons lost, instead of another set, why, the Bank Superintendent should be held accountable for it.

Now, with all these considerations which I have addressed to the Senate, what should Mr. Ellis have done? After Reid and Aldrich made their report to him in March, 1875, what course should he have pursued? You may possibly say that he ought to have done one thing. The Bank Superintendent says that he ought to have done just what he did, or at least it appeared to him at the time that he ought to have pursued the course that he did; and, gentlemen, with all respect, what right have you to say that he should not, unless you can find from this evidence that he was actuated by some improper motive or conduct, that his action was criminal in a moral sense, if not in a legal one, that his purpose was corrupt, that he had a design to favor Jay Gould or somebody else, that he had a design to protect private interests at the expense of depositors of a savings bank? If that was his purpose, if that was his design, I stand here, although his counsel, and say that he ought to receive not only your condemnation, but the condemnation of every right-thinking man in the State. But, if it was his purpose to protect the savings bank system, to prevent a crash and run, and an injury greater than the one you complain of, then I say that any person that will condemn that act fails to draw the proper distinction between an unintentional act and an act that is wilfull and corrupt in its purpose and design. But what was he to do? Counsel for the State has told us what he ought to have done. Now, I beg, Senators, to call your attention to the law as it then stood, and see if there be any misunderstanding between us as to the construction of the statute as it then existed. I am speaking now of March, 1875.

The act of 1875 was not then a legal enactment of the State. The act of 1871, in substance, is this, and the Senate will pardon me if I call your attention to it somewhat at length, as it has been discussed by the counsel for the State. It has been more or less discussed by Senators, and some Senators have discussed this provision during the progress of the investigation. The act requires an examination by the Bank Superintendent of every savings bank in this State at least once in two years. Complaint has been suggestively made by some Senators that the Bank Superintendent ought to have made examinations oftener than he did. The Legislature has seen fit to say that a general examination, at least once in two years, is sufficient. The superintendent could not go beyond the power of the Legislature, and it would have been the height of impudence on the part of the superintendent to have set his fiat beyond, in opposition, to the will of the Legislature, as expressed in this enactment. They have simply required an examination at least once in two years. Then the act proceeds: "1. That when any bank fails to make a report, or the superintendent has reason to believe"—I suppose that means good reason, valid reason, a thing appearing to his mind, a thing of substance—"that the bank is loaning or investing its money contrary to its charter or to law, or is conducting its business in an unsafe manner, then the superintendent is required to make an examination by himself, or one or more competent persons by him appointed"—that is, he does it when he has reason to believe that the bank *is* loaning or investing, present tense, at *that* time—"contrary to its character or to law, or its business is unsafe, or the bank fails to make a report, then he may order a special examination; and if it shall appear to the superintendent, from any examination made pursuant to the provisions of this section"—I want you to mark, Senators—"if it shall appear to the superintendent from any examination made pursuant to the provisions of this section, that any bank has violated its charter or law, or has conducted its business in an unsafe manner, he shall issue an order, under his hand and seal, requiring the bank to discontinue the illegal practices"—and if anybody knows what the remaining or the following words are; what construction, or what meaning they have, why they have found out something that I have not; but it continues, "to discontinue such illegal practices and to act in conformity to its charter and law." That is not the precise language, but what it means, "And in conformity to its charter and to law." That is what he issues an order for.

Now, let me see, the examination mentioned in the section is the general examination to be made once in two years. The special examinations the law itself has provided. Senators from the inter-

rogatories put here, seem to imagine that it was the duty of the superintendent, under the law, to order an examination every time that he suspected that there was any thing wrong in the bank. However trifling, however immaterial the departure of the bank may have been from a strict performance of, or keeping within the strict letter of the law, or its charter, the superintendent must direct the special examination. But the statute itself has defined where the superintendent must make the special examination, to wit: "where the bank fails to make a report, when it is loaning or investing its money in violation of law, or when the superintendent has reason to believe that it is conducting its business in an unsafe manner," those are the only instances under the law of 1871 in which he could order a special examination. Then proceeds the section: Whenever it shall appear to him, from this general examination which the statute itself directs to be made, that certain state of things exist, to which I have called your attention, then he shall issue this order under his hand and seal. Now, what I desire to call the attention of the Senate specially to, is this: You see that the statute itself defines the case and defines the power under which the superintendent must act. Here are general words subsequently interpolated in this law, to wit: "In conformity to its charter and to law"—the learned counsel for the State laid particular emphasis upon that portion of the section—"that he shall issue an order directing the discontinuance of these illegal practices"; and probably I had better read that, and see the precise connection in which the words come in. [Reads.] "He shall, by an order under his hand and seal, addressed to the institution so offending, direct a discontinuance of such illegal or unsafe practices and a conformity with the requirments of its charter and of law."

Now, the only instance in which this statute permits the superintendent to make a special examination of a bank in that particular is when the bank is loaning or investing its money contrary to its charter or to law. There is the only instance, for a violation of its charter, that the law requires the superintendent to issue this order. There is the special power then delegated and enjoined upon the superintendent to exercise. Here are these general words: "In conformity to its charter and to law." What do they mean? I suppose it is the familiar rule of construction of statutes which will be recognized by every Senator around this circle, or at least every legal mind around this circle, that, when a statute grants specific powers, defines certain specific duties, and there be subsequently general words incorporated in that statute, that the general words do not enlarge the power, or enlarge the duty, but the general words are used in subordination to the special powers granted. Why, it is a rule of construction of statutes so familiar that it is unnecessary



to call the attention of the Senate to any authorities recognizing that rule. Here, then, is a special power specially limited to the superintendent, that when a bank is violating its charter, or violating laws in the loaning or investing of its funds, the superintendent may, after ascertaining the fact by an examination, issue an order directing the discontinuance of that practice. What does the word "practice" there refer to? The "practice" is the illegal and unsafe practices referring to the loaning or the investing, contrary to law; and then this general provision, "in conformity to its charter and to law," must necessarily be dependent upon and be subordinate to the special power granted. They are unmeaning; they have no effect, that part of the order "in conformity to law," any further than the illegal practices referred to. In other words, the form of the order of the superintendent would be, that "you must cease loaning or investing your money contrary to law, contrary to your charter; but you must invest your money in strict conformity to law and your charter." That statute is nothing more nor less than this. Why, it cannot be, the proposition is too pernicious, fraught with too much danger, that the construction of this statute is as put forward by the learned counsel for the State the other day, that the superintendent, for every infraction of law has a right to issue this order and thus commence sowing the seeds of its dissolution. The Legislature has given the power and limited the power of the superintendent by confining his order to an illegal loaning or investing of its funds. I must, therefore, invite the Senate, in their deliberations and disquisitions upon the subject to look at this law of 1875, and see that there is not an unlimited power conferred upon the Superintendent of the Bank Department, that he can enter a bank and commence wrecking it, whenever he discovers a departure from the strict rules of its charter or the strict interpretation of law, but to look at the statute itself and see that the statute limits his right to the issuance of this order to the case where the bank is violating law in the loaning or investing its money; I am not speaking of the other branch. Senators will bear in mind that I am speaking now of the violation of law, and the only violation of law—my point is, that the only violation of law for which the superintendent has power to issue this order is when the bank is loaning or investing its money in hostility to the provisions of its charter and in opposition to the requirements of law. It has not that general application which has been assumed through the trial, and which was necessarily assumed by the learned counsel for the State.

Senator HARRIS—Mr. McGuire, I would like to call your attention for the purpose of hearing your view, as it is a matter of considerable importance, of these words: "Or is conducting business in an unsafe

manner, that then he may issue an order directing it to discontinue its illegal practices and to conform to safety and security in its transactions."

Mr. McGUIRE—I have not got to that question yet.

Senator LOOMIS—Does the counsel argue, or seek to prove, that in any illegal proceeding by any of the banks, the superintendent would not have jurisdiction?

Mr. McGUIRE—I respectfully answer that I have not yet discussed or alluded to the subject of unsafe practices. I have simply called the attention of the Senate to violations of law. An unsafe practice may be within the supervision of law, or it may be outside. I have simply argued to the Senate that the superintendent can issue this order when a bank is loaning or investing its money contrary to its charter or to law, and reserve the discussion of the other question by informing the Senate that I did not allude to the *unsafe* portion of it at all. The Senator from the Thirteenth must have misunderstood my remark. I alluded to this for the purpose of showing that it was urged by the counsel for the State that, for any violation of law, or any provision of its charter, the superintendent had the power to step into a bank and throttle it to its death. It is that proposition that I am contesting and denouncing that the law specifies where he could act for a violation of law.

Now, then, comes in the question of the unsafe practices. I may discuss not only the illegal practices but the unsafe ones. But what is an unsafe practice? When we go to define "unsafe" we get into a broad sea. It is an unfortunate word in that statute; it is a word that might mean anything and it might mean nothing. What it may mean each individual may determine for himself. A bank may continue within the provision of its charter, may confine itself strictly to the provisions of law, and still it might be doing business in an unsafe manner. There are a thousand ways in which it could do it. It might be loaning money by taking the securities provided by law. Those securities may not bear interest sufficient. For instance, I will illustrate. Suppose a savings bank to-day should buy four per cent government bonds, which it has a right to do, and receiving the interest of four per cent pay its depositors five, there would be an unsafe business. In that case it would be the duty of the superintendent, undoubtedly, to call the attention of the bank to it, and direct that that unsafe practice should be discontinued, and to direct and require the bank to do its business in a safe and prudent manner. But I am asked the question again, whether, if a thing has been done, the superintendent has power to require the undoing of what has already been accomplished. Now I propose to look at this section again in answer to the Senator from the Eighteenth: "And

whenever any savings bank, or institution for savings, shall fail to make a report in compliance with this act, or whenever the superintendent shall have reason to believe that any savings bank, or institution for savings, is loaning or is investing money in violation of its charter or of law, or is conducting its business in an unsafe manner, it shall likewise be his duty, either in person, etc., to direct an examination of the affairs and transactions of the institution, and whenever it shall appear to the superintendent, from any examination made pursuant to the provisions of this section, that any savings bank or institution for savings has been guilty of a violation of its charter or of law." What does the word "has" there refer to? The Legislature *has* directed the superintendent that when it *has* violated its charter or law, he may direct an examination, and whenever the examination shows that it *has* done the particular act—because the word *has* cannot refer to any thing else—whenever the examination shows that it *has* done the particular act upon which he directs the examination, that then he shall issue this order.

Now, to illustrate: There is no power given to the superintendent here to direct a special examination for a thing that took place seven or eight years ago. That is certain, because the language of the section is that when the institution is loaning its money—*is* loaning; when the superintendent has reason to believe that it *is* loaning—he shall direct an examination, and when the examination shows that particular act—the *particular* act upon which the examination is based—then he may direct its discontinuance. But where is the power of this section—and I will apply it to this Third Avenue Bank—where is the power in this section, if the violation was had seven years ago, to direct an examination into the conduct of that act? Senators who have studied over this section will call my attention to some provision of law. I certainly should be very happy to be informed of a provision. There is nothing there; and this Bank Superintendent, being an officer of special and limited jurisdiction, he cannot assume any power not specially delegated to him by the Legislature itself; and the only power that they have delegated to him is, that when the bank is loaning or investing its money wrongly, to direct an examination, and when the examination shows that the act which he had reason to believe has been accomplished, that he may direct its discontinuance.

Now, then, to call your attention to the Third Avenue Bank, in the particular to which the distinguished Senator from the Eighteenth has referred. There were, it is claimed, illegal securities in the Third Avenue Bank; so it is claimed, and it has been suggestively said that it was the duty of Mr. Ellis to direct this bank, under this order, to take these securities out and supply in their place legal securities,

and, if he did not do it, that he neglected a duty imposed by law. I repeat again, when did this bank get these securities? Was there any time during Mr. Ellis' administration that the Third Avenue Bank was then investing or loaning its money in violation of law? Is there a particle of proof? Has there been a suggestion made to you, Senators, that any of these alleged illegal acts took place under Mr. Ellis' observation, or during even his administration? I will show you when this bank got these securities.

Now, from the report of the Superintendent of the Bank Department in 1868, we read: At an early day the reports of these banks were generally not as specific as are required now by law, but in the year 1867, the resources of this Third Avenue Savings Bank were, in bonds and mortgages, \$1,163,850, the total amount of its stock investments at par, was \$3,092,000.

Now, you will see by looking at the schedule at some other portions of this report, we find that out of that \$3,092,000 of stocks \$1,800,000 were the bonds of other States. As early as 1867, Senators, this Third Avenue Savings Bank had \$1,800,000 of the stocks or bonds of States other than the State of New York.

To trace it down; in 1868, the Third Avenue Bank reported to the Bank Superintendent of that year, these bonds and mortgages were \$1,971,588; United States stocks had cost \$1,056,000; New York State bonds had cost \$82,000; other States bonds \$672,950.50.

There was the amount of its securities in other States, these Southern States securities, as early as 1868, in 1867 and 1868. I call the attention of the Senate to the fact, that this bank held this large amount of securities which were permitted by Mr. Schuyler, the then superintendent, without a protest, which was communicated to the Legislature and the Legislature never protested against it; and to-day we witness the spectacle that Mr. Ellis should be put upon trial, and a conviction for neglect of duty of Mr. Ellis is asked upon the ground that Mr. Schuyler and Mr. Howell permitted these bonds of other States to be purchased and remain in that bank. But it does not stop there. I will proceed along to show what was done with this bank subsequently. The next year the report of the Third Avenue Bank is, that these bonds and mortgages had increased to \$2,183,000; that its United States stocks were the same as in the preceding year, \$1,059,000; stocks of other States than New York, \$1,213,000. The year before, bear in mind, Senators, that its bonds and stocks of other States were a little over \$600,000, and in the year 1869, this bank doubles its securities up to \$1,200,000; matters of public record known to all men, suffered and permitted by the authorities and when the present superintendent comes into office, he finds this same lot of securities in that bank which the Legislature

had suffered to remain there without protest and its predecessors had never objected to at all. But, in the course of a year or two, the bank got into trouble. Then we begin to see a little change in the condition of the bank. The next year, the bonds and mortgages of the institution remained the same, a little increase, \$2,116,000; United States stocks remained the same \$1,059,000; stocks of other States than New York, \$713,000; having disposed of about \$500,000 of its bonds during that year. But a new thing creeps into this report at this year, the year 1870, which I desire to call the attention of the Senate to for a moment. Then, for the first time we find that they have bonds of Hudson county, New Jersey, to the amount of \$50,000; Jersey City bonds, \$68,000; Hoboken City bonds and the Dry Dock, East Broadway and Battery bonds. Now, then, is Mr. Ellis responsible for this class of securities getting into this bank, having been there five years preceding his administration, he being appointed to the incumbency of this office in 1873, and these stocks and bonds getting into this bank five or six years anterior to that time? Are you, Senators, to seriously consider the propriety of holding Mr. Ellis responsible for this class of securities which subsequently depreciated, because his predecessors allowed them to be purchased and remain as a part of the assets?

But there is another branch of this case in regard to that which I desire to call your attention to, before the suggestion that I was to make to this, probably before I could get through the particular part of the book, that I wish to call your attention to is this, that in the report of Mr. Keyes to the Bank Superintendent, and by the Bank Superintendent transmitted to the Legislature, in speaking of this Third Avenue Bank and its line of securities, Mr. Keyes there states that this Third Avenue Bank, by provisions of its charter, has the right to buy bonds of other States, that although the power is not precisely given in the charter creating the Third Avenue Bank, the power to buy outside securities is implied from the terms of the charter itself. That is in a document sent to the Legislature years ago.

Senator SCHOONMAKER — Have you the charter there?

Mr. McGUIRE — I have not the charter. I am stating — and I will find the provision before I get through — that it was there claimed that the Third Avenue Bank's charter gave the right, by implication to purchase these bonds and hold them.

Now, if that power did, in fact, in reality exist, then even Mr. Schuyler was not to blame for allowing the bank to purchase and to hold them as a part of its assets.

There are some other matters that I wish to call the attention of the Senate to connected with this Third Avenue Bank. The exam-

iners, Reid and Aldrich, have appeared before the committee and before this Senate and given their testimony as to the manner of conducting an examination of the bank. From the critical examination to which Mr. Reid was subjected, from observations made by distinguished Senators during the examination, an attempt was made to, discredit the examinations made by Reid, and an attempt was made to discredit him as a proper, competent examiner. Now, let us see what there is of that. Bear in mind, that in 1871, this law was passed requiring the superintendent to make these special examinations, and requiring him to appoint one or more competent persons to conduct the examination. I read now from the report of Mr. Howell to the Legislature in 1872, and let us see whether these two gentlemen Mr. Reid and Mr. Aldrich, are obnoxious in any degree to the criticisms that have been attempted to have been passed upon them. He informs the Legislature as follows: "The examinations, with one or more minor exceptions, have been made by the following named gentlemen, acting as a committee: Emerson W. Keyes, William F. Aldrich and George W. Reid. The experience of Mr. Keyes in this department, his familiarity with the subject in all its aspects, and his established reputation, points to him as eminently fit to constitute one of such a board of examiners. Mr. Aldrich was a lawyer of my acquaintance, in whose ability, integrity and discretion I had confidence, and whose knowledge of the law, in examining abstracts of title, etc., it was believed to be valuable, as the event proved it to be. Mr. Reid was highly recommended to me as a competent and experienced accountant, and his associates fully confirm that testimony. To the thoroughness and strict impartiality with which the work committed to these gentlemen has been performed, the summary of results bears ample testimony." This was the opinion of Mr. Howell after all these examinations had been made. They continued this business of examination during the three years of Mr. Howell's incumbency; and Mr. Ellis, anxious, desirous that these examinations should be conducted by gentlemen of the character, standing and responsibility, as stated and indorsed by Mr. Howell, continued these gentlemen of experience in the performance of this duty; and will, when Senators read, when they read what an experienced, upright, truthful man, Mr. Howell is, his estimate of the character of these examiners will, Senators, after reading this, sneeringly inquire: "Why did you dig up that old antediluvian?" The thoroughness of the examination of Mr. Reid in all these departments bears witness to the thoroughness with which they were made, the impartiality with which they were conducted; and Mr. Ellis had the right to, as he did, rely upon the action and the reports made to him by the gentlemen whose names I have mentioned.

There is another subject permit me to call your attention to. I do it for the reason that it is now resurrected for the first time, as if these irregularities, as they are called, are peculiar to the administration of Mr. Ellis. I wish to disabuse the minds of the Senate that every thing complained of here did not have its origin during the administration of Mr. Ellis, but he found them as a part of the system when he entered upon the discharge of his duties; he found them tolerated by upright, experienced bankers, and men whose integrity nobody can doubt. If there be any evil in the system or in these acts, Mr. Ellis is not accountable in the least for them. That much time was taken, as Senators know by witnesses brought here from New York, to prove that the cost of this banking-house was increased as one of the irregularities which was tolerated, and first tolerated by Mr. Ellis to cover up a deficiency of assets. Now to show you that this is not so, gentlemen, we have already by the oral testimony in the case showed that this system of adding cost to bank buildings originated years and years before the incumbency of this officer. In 1867 the report of the Bank Superintendent to the Legislature is [reading] that the cost of the banking-house of the Third Avenue Bank, I will read from page 98 of the report of the Third Avenue Bank in 1867. "Total amount invested in real estate, furniture and fixtures, \$66,500." That, in 1867, is the report of the bank to the superintendent, with not only its bank building but its fixtures all included — \$66,500.

Now I call your attention to page 127 of the book, the report of the Third Avenue Bank the next year, and see what was done. Then the bank reported: "Amount invested in real estate, banking-house, furniture and fixtures, cost \$195,000; market value, \$200,000." Their real estate was but \$200,000 standing on the books at \$227,000 in 1868. Still you have been carefully listening almost a whole session of your body to proof taken that this bank added \$100,000, to the cost of its building and the implication was sought to be created that there had been in 1873 or 1874 or 1875 an attempt by the bank seeking to cover up a deficiency by stating the amount of the increased cost. But here you find that it was done in 1868, during the administration of Mr. Schuyler, the present Auditor of the State. You find it was continued during the three years of Mr. Howell's administration of the office, and you find it without a dollar's increase during the administration of Mr. Ellis. Now, is it fair, is it just to the respondent to try to saddle upon him the consequences of the increased value of real estate which was made years and years before his term of office commenced? And I appeal to you, Senators, and it is one of the distinguishing features and peculiarities of this case, all these little irregularities, all the complaints made here of the management of these banks there is not a wrong or alleged wrong but occurred years and years before Mr. Ellis

had any control over them. If they were wrong, you are trying to visit upon him the sins of his predecessors. Is it fair or is it just, is it in consonance with any fair dealing which should exist between one branch of the government and one of its high officials? I will read to you another thing to show that it did not escape the attention of the Bank Superintendent at that time.

Senator COLE — It is now nearly six o'clock and I would like to inquire whether the counsel would want to continue much longer?

Mr. McGUIRE — I will continue to the regular hour of adjournment.

Senator COLE — To six or eight o'clock?

Mr. McGUIRE — I say, to the regular hour of adjournment.

Senator COLE — Well, go on.

Mr. McGUIRE (resuming) — I was saying to the Senate that I would call its attention to the fact that this adding increased cost to buildings was not overlooked by the superintendent himself, and he communicated that fact in 1868, after the addition by this Third Avenue Bank, to the attention of the Legislature. I will read it. In speaking of the subject of savings banks he says: "The features of special interest brought to view in the former comparison are founded in the gradual increase of substantial investments, and the decrease in the proportionate sales in the aggregate of loans and miscellaneous assets. Thus, bonds and mortgages have been increased nearly \$12,000,000, stock investments more than \$8,000,000, and real estate \$346,540." He says, "the increase in real estate is the point I wish to call the Senate's attention to—the latter is in part a fictitious gain, however, arising from reporting the estimated increase in the market value of the banking-house owned by the institution."

Senator VEDDER—Would it be in order to move to reconsider the vote as to continuing the session?

The PRESIDENT—It would.

Senator VEDDER—I move that the motion to adjourn from six to eight o'clock this evening be reconsidered. (Adopted.)

Senator VEDDER—I move the Senate do now adjourn till to-morrow (Friday) morning, at ten o'clock.

The President submitted the motion of the Senator from the Thirty-second to adjourn, and it was adopted.

The Senate hereupon adjourned until Friday morning, the seventeenth inst., at ten o'clock.



SARATOGA SPRINGS, *Aug. 17, 1877*—10 A. M

The Senate met pursuant to adjournment, a quorum present.

Mr McGUIRE resumed his argument on behalf of the respondent as follows :

Mr. President, I propose for a few moments to call the attention of the Senate, to the meaning of the word "unsafe," in the statute governing the action and prescribing the duties of the superintendent.

As I stated yesterday, that for any infraction of law or violation of charter, the superintendent was authorized and not only authorized but directed to issue an order requiring the bank to discontinue illegal practices and to conform to the provisions of law. There is, also, another provision which I mentioned but which I did not advert to at much length yesterday, that, in addition to the violation of law which the bank might commit, that, if the bank was conducting business in an unsafe manner the superintendent, in such case, might issue an order, and incorporate in the order a provision requiring the bank so to conduct its business that it would be conducted with safety and security to depositors. Now that word "safety" can hardly be defined, that is, it has no settled, definite, fixed, meaning; that is, that the law itself cannot give the definition to the word "safety" as used in this statute. The word "safety" must depend upon the condition of the bank and its mode of doing business and whether it is safe or unsafe for a bank to do business must be decided by the judgment of the superintendent after examining into its condition. In other words, to determine the safety of business, it is a question of fact, and that question of fact must be decided by somebody and the only person authorized by law to decide it is the head of the Bank Department. Now, if he considers it unsafe, if it shall appear to him, to his judgment, to a reasonable degree of sense, that it is unsafe, inexpedient, for the bank to transact business or that it would be unsafe for depositors, he shall issue an order requiring them to do and perform the acts to which I have called the attention of the Senate. I now call the attention of the Senate specifically to this, that it must have been assumed by the counsel for the State, and, although not directly approved by any Senator, it has been suggested, at least in the course of the examination, that this power given to the superintendent to issue the order when a bank is transacting its business in an unsafe manner, gives the superintendent power to issue an order to prevent it from receiving deposits and paying out its money. That I understand to be the position of the counsel for the State. What would be an order preventing a bank from receiving deposits and paying out its money? Why, every man can see that that would be an injunction

stopping the business of the bank. That is all there is of a savings bank — receiving deposits and paying out its money. And can it be claimed, can it be maintained here that the law has clothed its superintendent with illegal powers, to issue an order in the nature of an injunction restraining the transaction of business by a bank? When the bank discontinues "its illegal practices, if the bank does continue its illegal practices, why then the bank proceeds to business. If it does not discontinue its illegal practices, or if it conducts its business in an unsafe manner after the issue of this order, then the bank is to be turned over to the Attorney-General, for the action of the courts. There is where judicial action is invoked — when the bank refuses to comply with the order of the superintendent, then the action of the courts is invoked, and the bank is restrained by judicial power from transacting business for which it was incorporated.

But the extent the proposition of the counsel for the State goes is that the superintendent can enjoin a savings bank from transacting its business. Why, that order would stop the transaction of business entirely by the bank, if it extends to the power of prohibiting the receiving of deposits or paying out of money. I apprehend Senators, that there can be no question about that construction of the statute. The order is not to stop a bank from doing business. That order presupposes that it is continuing business, but in the continuance of its business, it is guilty of some illegal act, or that it is guilty of some act which may be legal in and of itself but which may result in insecurity; and when either of these events or contingencies appear to the superintendent then the superintendent may issue his order not to close the bank, not to prevent it from receiving or paying out money, but requiring it to discontinue its illegal practices, and directing it to continue its business in a safe manner. It cannot be possible that this extraordinary power under this statute is given to the superintendent, to virtually close a bank, without the bank having an opportunity of being heard, without the bank having its day in court, that an arbitrary ex parte order of the superintendent can prohibit the transaction of business by a bank. I do not suppose, gentlemen, that that is intended or was intended. The superintendent is required by law, when he desires that a bank shall cease the transaction of business, to resort to another provision of law and not to this order. When a bank is insolvent, when it is inexpedient for it to transact business, not when it is pursuing unsafe practices or illegal practices, but when from the general scope of the business, as appears to the superintendent, from any examination made that it is improper, inexpedient, unsafe, insecure, to depositors, then it becomes his duty to pass the bank over to the Attorney-General for him to invoke judicial action. There is where the power exists to stop a bank from

doing business. The power does not exist in the superintendent that he can, at any time, arbitrarily, and by an ex parte order prevent any institution from transacting business which the law authorized it to conduct.

Now in regard to this Third Avenue Bank I called the attention of the Senate yesterday to many of the circumstances with which the superintendent at that time was surrounded. The Senate will permit me to call its attention to another and a very significant circumstance. It may be known to every Senator around this circle that the Third Avenue Savings Bank was the first bank that was ever closed in this State by the action of the superintendent. Mr. Ellis came in possession of this office. There were no precedents of former Bank Superintendents closing banks by any proceedings which the law authorized to be instituted. There had been numbers of failures of savings banks in the State; some of those occur to me now. It is unnecessary to mention. During the administration of former superintendents, Mr. Schuyler, for instance, I can call to mind the failure of three or four savings banks in this State, where the superintendent permitted them to transact business until they run the bank into utter insolvency, and forced by their own poverty into liquidation. Under the administration of Mr. Howell there were only two or three failures of these savings banks; the action of the superintendent had never been invoked to close them up. They had gone into voluntary liquidation, when they were unable to proceed any longer, and then, when Mr. Ellis assumed the duties of this office, he found no action by his predecessors where they had resorted to this extreme remedy which the law put into their hands for the purpose of closing these savings banks. Do not understand me, Senators, that I urge this as a justification for any omission of duty which it was the duty of the superintendent to perform. I call your attention to it for the purpose of showing the circumstances under which the superintendent was surrounded, or at least one of the circumstances. It was a new and untried thing with him, or any other superintendent, and there being no precedent in this State by any former superintendent of closing an insolvent savings bank, he, as any prudent man would, hesitated long before resorting to this seemingly and probably justifiable extraordinary proceeding, with which he was clothed by the law.

Now, again, in regard to this same bank. Some of you, gentlemen Senators, might say that when Mr. Reid made this report of March, 1875, that the superintendent should have immediately placed this bank in liquidation, and for his failure so to do he neglected a duty which the law imposed upon him. If we assume in this case that the superintendent had no judgment to exercise, that the law had clothed

him with no discretion, that he was a mere machine to execute a mandatory duty which the law, as is claimed, imposed upon him, then there might be some plausibility to the position which has been assumed. But, if he had judgment, if he had discretion to exercise, if he could take into view and into consideration all the surroundings of the case, and determine the best means, the proper time, to close this bank, then it is a proper subject of consideration upon the part of the Senate, what those circumstances, what the views of the superintendent were, whether they are entitled to your consideration, whether they should have influenced his action or his judgment at that time. It has been assumed, in connection with this subject, on the part of the learned counsel for the State, that it is the duty of the superintendents to protect the depositors of one bank, although they might ruin the depositors of one hundred other banks. That is the position which the State assumes here, and which the respondent denies. The soundness of that proposition is challenged, as a pernicious, dangerous doctrine, which no Bank Superintendent or any officer clothed with discretionary powers ever could safely follow. As I stated yesterday — not indulging in much repetition — that I supposed the duty of the Bank Superintendent is to the entire banking system, to protect it as a whole, and not simply as a part. Now, the superintendent so understanding his duty, so believing that such was his power, that he could exercise a reasonable judgment to protect the interests of other banks in connection with this bank, and determine the time and the manner of closing up that institution; say, in March, 1875, that it should then have appeared to the superintendent that there were some twelve or fourteen or fifteen banks in the city of New York, which hostile action by the department against the Third Avenue Bank would have forced into utter insolvency, what, Senators should have been the duty of the superintendent under such circumstances? Should he have closed this Third Avenue Bank when he must have known that the result of his action would precipitate disaster upon a dozen others? If you knew, if every Senator here had actual knowledge that such would have been the result of the action of the superintendent; if you have the knowledge now to determine that a forcible closing of this bank at that time would have bankrupted a dozen others, what do you say the duty of the superintendent should be? Should he close this bank and ruin the others, or might he delay a spell for the purpose of saving the others? Now the superintendent has told you that after this report of Reid's he concluded that that bank — the Third Avenue Bank — could not proceed safely in business thereafter, and the question with him was, not what the exclusive interest to that bank was, but what the interest of the entire banking system of the State of New York was. He con-

cluded—whether wisely or unwisely is not the question here to determine—that he would make an effort, not to save the Third Avenue Bank, but he would make an effort to save some ten or twelve other banks, which must necessarily go into liquidation, providing the Third Avenue Bank was closed. He made that attempt and failed. And, gentlemen, I call your attention to the matter to see whether there is any merit in the suggestion of the superintendent for that delay. Now, you might say, “But the results which the superintendent anticipated might not have occurred.” That is not the question, I apprehend, before the Senate. Did the superintendent *at that time* believe it? That is the question. Did he believe at that time that his action would save these other banks? If he did so believe, and his action was based upon the belief, then he has been guilty of no negligence, either culpable or otherwise, in the performance of that duty. But, as time progressed, it became evident that the saving of these other dozen banks by the process indicated by the superintendent could not be accomplished. He then commenced, or at least intended to commence, immediate proceedings for the dissolution of the bank, and made inquiries in regard to the effect upon the then sensitive, excited state of the public market, as to what the effect would be upon not only savings banks, but upon other financial interests, if these extreme, ultra measures were resorted to for closing the bank. It will not be necessary for me, Senators, to repeat what the superintendent has testified to you upon that subject. There will be no necessity for comment on my part, as my associate has commented upon that branch of the case at sufficient length; but there are one or two considerations which I call the attention of the Senate to and that is this: If Mr Ellis at that time knew as an actual fact, that the immediate closing of the Third Avenue Bank would have precipitated a panic upon other savings banks of the city of New York, what should then have been his duty? That is, if he had actual knowledge. I am assuming for the purpose of this branch of the argument that it had been plain, patent, certain, unmistakable, that a panic would have been produced and forced upon the market and savings banks. Under such circumstances, I submit to you, gentlemen Senators, whether the superintendent, for the purpose of protecting a few depositors in the Third Avenue Bank ought to have forced such a disaster upon the financial world? It is for you to say, if, on the assumption that such a state of things would have followed as I have mentioned, it is for you to say whether the superintendent ought to have forced this bank into liquidation at the expense of every other savings bank in the city of New York. But some Senator might say that such a result would not have followed; the superintendent had no right to assume that such evil results would

have been produced by his action. I do not suppose that is really the question for the Senate to determine, whether such results would have actually followed or whether they would not. We are not to consider for the purpose of disposing of this question of negligence what did or what did not ultimately follow or result from any action or inaction, but what did the superintendent believe, and what had he grounds—good reason for belief. If the superintendent had good reason to believe, and did believe, and acted upon that belief, that his action would be disastrous to other savings banks, then I submit to Senators, whether that is not a sufficient excuse for his inaction at the time. Now, *did* he believe it? Had he reason to believe it? You have heard, I submit, you have heard the statement of other gentlemen of high character and repute in the financial world in the city of New York, and they have told you what their views were upon the closing of that bank at the particular time that Mr. Ellis was in New York. They have told you the excited and feverish condition of the public mind. They have described to you that the financial world stood almost upon a volcano. Here were failures and bankruptcies of the most prominent men of the country, and the most prominent institutions of the State constantly and daily occurring; and, in the midst of that sensitive, feverish state of the financial pulse, to have thrown another fire-brand into the market increasing the panic, which was then slumbering and ready to break out in any moment, they tell you, that, although not in words, all of them, but in spirit, they tell you that the closing of that bank, at that particular time, under the circumstances, would have caused the most disastrous results to the financial institutions of that city. They may have been mistaken in their views; these consequences may not have resulted from the act but they supposed that such would follow. The superintendent supposed and believed that such would follow, and so supposing and so believing he made that the basis of his action, and he did act and forbear to immediately close that bank until the financial excitement had subsided, until there was an appearance of more security in the money market. Now, are you, Senators, going to say that Mr. Ellis had no right to believe any such thing? Are you going to say that he had no right to act as he did, provided he did believe it? Are you going to hold a rule here applicable to a public officer, that when the acts of the public officer will produce general devastation and ruin not only among the savings bank institutions, but extending and permeating through every financial center of the country, that he ought to have acted; that there was a mandate of a statute requiring him to act, and requiring him to close a particular bank, when his act would have involved the whole banking system in destruction? I submit to you, gentlemen Senators, that you should hesitate long before you

adopt a rule requiring this or any other superintendent to close any one particular bank, when the closing of that bank will bring down to bankruptcy ten or twelve others, but that you will justify the prudence, caution and wisdom of the superintendent that will nurse other banks, although it may apparently be at the expense of another.

Now let us see whether Mr. Ellis was not justified in his original view that he entertained in the matter? He tells you that his purpose was originally to save these other banks; that he became satisfied that, if he proceeded to close the Third Avenue Bank, the other banks would necessarily be driven into insolvency. He did close it, and it was closed in 1875, and in less than nine months thereafter every bank which Mr. Ellis protected was driven into the hands of those vultures of the law, receivers, every one of them, eleven, twelve, or thirteen, of these banks which he had been trying to save under this merger clause of the act of 1875, did, by the action of the closing of the Third Avenue Bank, go into the hands of receivers. We, therefore, have a practical illustration of the forethought of the superintendent, not to proceed with haste, not to proceed recklessly, not to sacrifice one or a number of very large institutions merely to save or protect the interests of a few depositors in one particular bank. But, whatever that may be, whatever the superintendent may say, whatever excuse he has attempted to furnish here, it is for you, gentlemen of the Senate, to determine. It is for you to say whether the superintendent has any judgment, any discretion to exercise in the management of the general bank system of the State, or whether he is a mere automaton placed in this high office, clothed with this important trust of superintending and protecting the affairs of really a sacred trust, of these people that deposit their moneys in savings banks, so that he is a mere machine to carry out certain provisions or directions of the statute, having no judgment, no will, no discretion whatever to perform. Can it be possible that when there is a fund of \$350,000,000 in these savings funds, 160 of these banks, all placed under the care of the superintendent, which requires close management, which requires close scrutiny, and vigilant watchfulness on the part of the superintendent and those he may employ, that such an officer has no discretion or judgment to exercise at all? We have submitted to you, my associate as well as myself, in the preceding part of the argument, that there is a discretion in this officer, that he must exercise judgment in his actions, that the law has clothed him with a large amount of discretionary power, and I submitted to you, yesterday, gentlemen of the Senate, and I repeat to-day that when the law has clothed this high officer in one of the most important departments of the government of this State with a judgment and a discretion, that you, as a Senate of

the State of New York, have no right to control or supervise that judgment at all. I say that when the law clothes a judge of this State with discretion that no Senate, no body of men, however organized, has a right to say that that judge has exercised his discretion improperly unless, gentlemen, you couple with the exercise of that discretion corrupt motives and corrupt actions. If you can attach and add on corruption to his conduct, then you, as a public body, have a right to call him to account, to make him amenable to the laws of the land. But, when he simply errs in judgment, when he simply has acted in the manner contrary to what your judgment may at this day indicate the law has not clothed you, not clothed any other body of men with power in this State to say that that discretion and that judgment although honestly was improperly exercised, and therefore you have a right for that reason to remove him from office. This is disconnected from the proposition, gentlemen, for I wish to keep the thing separate. I say, if you sit here pretending to be a judicial body or a quasi judicial body to hear testimony and to deliberate upon that testimony and to conclude or form conclusions upon that testimony and render a judgment upon the proof taken before you, if you assume all these things, I say there is no law or any system or any principle either of statutory or of common law that gives you a right to sit in judgment upon the exercise of an honest judgment by a public officer, whether he is Bank Superintendent or whether he is any other officer, or the incumbent of any other official position. Why, the proposition would be monstrous and pernicious that every other public officer of the State having a duty to perform, involving his duty, involving the exercise of a sound discretion, if the power was exercised elsewhere to supervise, control and reverse the exercise of the judgment of the officer. Why it would make the examination of the officer depend upon the caprice of somebody else all the time. He would not know how to act. Instead of exercising his own judgment, he would be constantly looking to see what A, B and C would think of the thing themselves.

This supervision of the banks has been lodged by the law somewhere, and the law has seen fit to lodge it in the Bank Department. There the exercise of the judgment ends, and it seems to me from the meaning as a perversion of law, as a perversion of the powers of anybody to say that a public officer has exercised a judgment honestly, because there is no Senator sitting around this circle that attempts or dare impeach the official integrity of this man, and to say that he exercised his judgment but honestly, and for that honest exercise of judgment which we consider wrong we will remove him from his position. Now, I separate that from the other principles which have been stated here under this statute of 1823, under which these proceedings



are entertained, it is claimed, and I am not prepared, nor do I intend to controvert the proposition that this Senate may arbitrarily remove a man. That is assuming that that law of 1823, is applicable to this case, and I shall have something to say before long, whether that statute of 1823 has any application to this case at all, but for the purpose of argument I now assume, that that act of 1823 governs this case. I do not deny your right to arbitrarily remove a man. I do not deny your right that you can immediately the moment the Governor sends you a message requesting and recommending the removal of an officer, that you, in two months afterwards, can close your deliberations and remove him without giving him a notice at all, I do not controvert the validity of the proposition, for what is that act? Why, the power of removal is only the correlative of the power of appointment. You appoint without a reason, and you can remove without a reason. You can reject a nominee of the Governor without assigning any reason for your rejection; you can appoint him in like manner without assigning any reason. And here comes in the converse or correlative, that when the Governor requests that his own appointee may be removed that you can act in the same manner that you appointed. But, gentlemen Senators, when you come to clothe yourselves with *quasi-judicial* powers, when you exalt yourselves into a kind of court with all its functions, when you call witnesses before you and administer oaths and subject the examination of these witnesses to the strict rules of evidence as prescribed by courts and by the common law, and when you have adopted a formula for your judgment, when you have prescribed rules how you shall vote, and what your judgment shall be where is your power to do it? You say you are acting under the act of 1823. Where do you get the power under that act with all this paraphernalia and an expense of about \$2,000 a day to this State? The arbitrary power exists there, and, if you wish to remove this incumbent why not exercise your arbitrary power? What earthly use or earthly good can it be to institute this expensive inquiry, and when you have assumed these *quasi-judicial* attributes to say, or at least it is assumed, that you are to continue your judicial character down to the time of the close of this investigation, that you are to deliberate upon this evidence, you are to find certain facts from the evidence, and, from the facts found, then you are to base your conclusions or judgment. Upon that theory, gentlemen of the Senate, much of my argument has been addressed to you. I have called your attention particularly to this Third Avenue Savings Bank as to the facts that exist. Find what the facts are. I have called your attention to the conduct and the surroundings of the bank at that time, for the purpose of asking you to take into consideration the determination of the fact upon which your conclusion must necessarily be based,

whether this officer has been guilty of any negligence, either culpable or otherwise.

The other branch of the case, as to your right, as to your power under this act of 1823, I propose to reserve for the conclusion hereafter of what I may have to say. It is sufficient for me to say at this time for the purpose of calling the attention of the Senate to the proposition that I challenge, I deny the right of this Senate to remove De Witt C. Ellis at all ; and, I think, before I conclude, if Senators will give the case any consideration at all, they will be satisfied that they have no more right to remove Mr. Ellis from his office than they have to remove me—but I don't hold any office—well, to remove me from my low office in Elmira. It is an assumed power on the part of the Senate, in thus desiring to dispose of the superintendent. The reasons I will hereafter give.

Now, I do not propose to take up much time of the Senate in the consideration of other banks. There are one or two of these banks where the action of Mr. Ellis has been criticised that I will beg the indulgence of the Senate while I call its attention to the action ; and I do it for the reason that the learned counsel for the State not only did not content himself with stating, but constantly repeated and reiterated that Mr. Ellis had never done or performed any act in relation to these banks after he had notice of their precarious or insolvent condition. I do not suppose that the counsel intentionally made any such statement. I do not suppose that his object was to mislead the Senate, and neither could he have misled it if he tried, because it was too apparent that the action of Mr. Ellis was uniformly watchful and diligent in all these tottering, uncertain and weak banks. Now, we have it at the outset that when Mr. Ellis commenced at the Third Avenue Bank, or, at least, when Mr. Ellis became aware of the—I will use the strongest word that can be used—the rotten condition of this savings bank, when he was apprised by the report of Reid in March, 1875, that this bank could not succeed, that it must ultimately go into bankruptcy or insolvency, what did Mr. Ellis do ? He has told you about his attempt to preserve these other savings banks which would follow in the wake of the Third Avenue Bank but during his attempt to merge these small banks into the larger ones, he directed Reid, who was then doing business in the city of New York, to keep a watchful eye upon every one of these savings banks in the city, and Reid obeyed the instructions of the superintendent, and week after week at one or more of these banks, first one and then the other, we find Mr. Reid dropping into each of these banks that need watching, and communicating the result of what he saw to the superintendent at Albany. Does that look like neglect on the part of the superintendent, that he was allowing these

banks to pursue their business in their own way, that he was allowing them to loan at hazard? Does it look like, as the counsel said, that Mr. Ellis was indifferent to the conduct of these banks, and enjoyed his time in Albany, or that, as the associate counsel for the State said, he was rustivating in the mountains of New Hampshire and allowing these poor widows and orphans, like Mallon, to be subject to the tender mercies of this Third Avenue Bank? There was the utmost vigilance enjoined by the superintendent upon Reid and Reid discharged that duty with fidelity; he discharged it with promptitude, and he performed it with intelligence, and every suspicious circumstance, every variation as connected with these banks was immediately reported by Reid to the department at Albany. Why did Reid do it? He did it under the direction of the superintendent himself, and when there was any thing calling for immediate action upon the department, why, it wasn't found in correspondence. You could not put a bank upon a firm basis by a letter, but we find that Mr. Ellis, the moment he is apprised of any thing wrong in a bank, or any occurrence of this instance going to New York, and arranging and insisting upon any deficiency being supplied, any irregularity being corrected, any mismanagement to be avoided. And hence it appears, that in one of those banks, a solvent bank—and the counsel for the State read with much emphasis a letter about the police going into the bank—the officers get into a quarrel, the president wanting one policy, the secretary another, until the matter had got to such an extent that one party called in the police. The letter was read and reread and commented upon, and still the counsel for the State told the Senate the other day, that Mr. Ellis never did any thing to correct the shameful proceedings. Now, is that true, gentlemen of the Senate? Why, Mr. Ellis tells us that he went to New York, went to the bank and examined it. He not only knew from Reid's examination that the bank was in a solvent condition, but he knew from an examination and inspection himself. All the trouble, all the difficulty there was in the whole matter was that there was a difficulty among the managers of the institution, and he corrected that management by requiring the obnoxious officers to resign and having proper men put in their places; and, without going into details, I am safe in saying, gentlemen of the Senate, that in every instance where an irregularity was called to the attention of the Superintendent that it was promptly attended to and promptly corrected. Take the case of the People's Savings Bank, of which so much has been said by the counsel for the State, and let us see what the history of that bank is. Bear in mind that Mr. Ellis took possession of this office in February, 1873. The first report that came to the office after his appointment was in

July of that year. Mr. Ellis authorized and directed Reid and Smith to examine this bank. You have seen who Reid is, and you have seen who Smith is. I do not propose gentlemen of the Senate to occupy your time with any criticisms upon Smith. It is not necessary for me to call your attention to this man, in that office, under Mr. Howell. I was going to state the same thing that occurred under Mr. Ellis in regard to this man Smith, occurred under the administration of Mr. Howell. We find this man Smith, then an examiner and clerk in the office, a spy upon the action of every superintendent that he has been under, and a traitor to every man that he has served; a man who is making private memoranda in his office, taking up reports and making such memoranda as he pleased, and at a proper time bringing forward and using this pretended memoranda to the supposed injury, of his employer. Mr. Ellis is not the first man who has suffered from the treachery of this man Smith; but he was one of the examiners, and the report of the bank and the report of Reid and Smith in September, 1873, showed a deficiency in the People's Savings Bank; the semi-annual report of the Bank Department, of July, 1873, showed a small surplus. The Bank Department was not satisfied with the exhibition of affairs as shown by the People's Bank. It, therefore, directs these gentlemen to make a thorough and critical examination of its condition, and they do it, and in September, 1873, their report is furnished to the Bank Department. Reid in his examination, showed a deficiency of \$28,000, and Smith showed a deficiency of \$36,000, the difference arising by Reid giving a larger value to some of the securities held by the bank than Smith was disposed to give. Now, the report of these two examiners of the department comes, but does Mr. Ellis remain inactive, as my friends have stated — does he do nothing? A bank with a small amount of assets, showing a deficiency of \$36,000 does the superintendent remain idle to the injury of the depositors of that institution? The evidence in this case shows that the very next day after this report came in Mr. Ellis reported this bank to the Attorney-General and the Attorney-General immediately commenced proceedings against the bank to declare its insolvency. Now, I must be permitted, even if it seems a digression, to make a remark or two here. It is necessary to the case itself that I should make the statement, and it is important to know the motives, and the animus, and the purpose which have been resorted to by the State in order to create a prejudice against this respondent. Reid reports that there is a deficiency of a certain amount. That report comes to the department, but before the final report is received by Mr. Ellis, the bank is handed over to the Attorney-General. The Attorney-General draws his complaint, and inserts the figures in that complaint as furnished

by Mr. Ellis, and Mr. Ellis furnished the figures as contained in the report of Reid. The next day, Reid sends his formal report to the Bank Department, and there is a discrepancy of figures between his letter of the day before and his report of the subsequent day of some \$6,000. Ellis calls the attention of the Attorney-General to the discrepancy, as appears by the informal and the formal report of the examiner, and the Attorney-General corrects the figures in the complaint. Mr. Ellis corrects the figures in the letter that he sent to the Attorney-General, to make that conform to the actual figures, as appearing in the formal report. Now, upon that innocent thing, a mere correction, a mere making a public paper conform to a fact as subsequently determined, the learned counsel for the State occupied the Senate knows how much time, the Senate knows how many witnesses were brought here to prove that there had been an alteration of a document. The Attorney-General's clerk was brought here; Smith was brought here; every other witness that they could think of was brought here for the purpose of showing that there was an alteration of figures in a complaint—that there was an alteration of figures in that letter which had been furnished to the Attorney-General, and it fell through. Senators have not forgotten if they read the papers of that day, that it was emblazoned in the associated press dispatch from one end of the State to the other, that Mr. Ellis had been guilty of a crime in altering, changing the public records in his office, creating a public impression that he had been changing, forging, altering records for the purpose of covering up a crime. Whether that was the purpose of the counsel for the State, I leave to the Senate to determine. It is sufficient for my purpose to know that it was emblazoned all over this State through the means of that associated press dispatch that this innocent, proper act of the superintendent was the means of concealing a forgery or a crime, which otherwise would have appeared in that event except for the alteration itself. I refer to it, Senators, as one of the means used in this trial for the purpose of creating some prejudice against this defendant. Is there a Senator around this circle, but what will say Mr. Ellis did right, performed a duty in fact, that when his examiner informally had returned one set of figures, and that he subsequently corrected those figures to correspond to the formal report, that he was doing nothing but what a correct, pains-taking official ought to have done? But to continue the examination of this bank—I say that when Reid and Smith's report came in in September, 1873, showing this deficiency, it was passed over into the hands of the Attorney-General. Did Mr. Ellis there, neglect his duty? Didn't he perform his duty to the strictest letter of the law? Could he have done less or ought he to have done more, and what more could he have done? But the Attorney-General

commenced the proceedings, and after the suit was commenced, the officers of the bank came to Albany and had an interview with the superintendent, they had an interview with the Attorney-General and this deficiency of \$28,000 or \$36,000 — Smith making \$36,000 — Ellis assumed that that was the correct amount, that they there promised and agreed to make up and put into the bank the deficiency shown, upon which they could transact business, and they did do it. Whatever counsel may say, the examination of the reports of that bank show that they did make up this deficiency and put the bank into the solvent condition that no Bank Superintendent in the State of New York could have driven that bank into insolvency after this deficiency was supplied. But this bank, like many other banks, had securities of doubtful character, that is, they became doubtful by the action of subsequent events — North Carolina bonds, Tennessee bonds, Alabama bonds. The purpose and object of the superintendent was to get all these bonds out of the bank as speedily as possible, and as fast as he could. Take the case of this People's Bank, that year 1873, when Mr. Ellis assumed the duties of this office. That held a large amount of these securities. In 1876 when this bank went into insolvency, they had but few, scarcely any, of these southern securities, they having been exchanged, most all, at least, for other proper and lawful securities. But in 1875, it may be important for the Senate to consider — much has been said directly, more indirectly, and a vast quantity suggestively, "Why didn't the superintendent require these banks to take these southern securities from out of its assets?" I attempted to explain yesterday one or more of the reasons why he didn't. I attempted to show to the Senate that he had not the power to do it. All that he could do was to advise, and in many cases his advice was carried out, and I now wish to call the attention of the Senate to one other fact. In 1875 the Legislature itself recognized these securities in these banks. One of the provisions of the general savings bank law in 1875, is authorizing all savings banks then in existence to hold and transfer the securities that they then had, a complete recognition by the Legislature, an authority by the Legislature to hold these very securities. And Senators here are gravely considering the question of removing Mr. Ellis because he did not direct banks to remove questionable securities, when the Legislature itself had said they might hold them. It is one of the anomalous proceedings and anomalous positions of this case, that when the Legislature has permitted things pernicious in and by themselves, I admit, and these pernicious seeds of destruction in these institutions, sown there by the Legislature itself, that when the dissolution takes place, that when the seed itself ripens and bears its harvest, that the Legislature has sown, they then begin to arraign,

condemn, investigate the case of the Bank Superintendent for the result of things chargeable and chargeable only to the Legislature itself; I say it is remarkable, and it is a thing that the Senate should consider. Why, take this available fund clause in all its charters, and I might as well refer to it in this People's Bank case, as some of these securities were there taken under that available fund clause, the most damaging, pernicious, destructive provision of law that ever was put into a savings bank charter; still every Superintendent of the Bank Department, from 1868 down to this time, has asked, petitioned, plead of you, gentlemen of the Legislature, to repeal that provision of these charters. It is under that provision of the charter, more directly traceable to that provision of the charters, than to any other provision of law, that every one of these banks have been swept into bankruptcy. Every widow and every orphan has lost their pittance by the Legislature putting provisions in a bank charter, authorizing trustees or the officers of that bank to loan, in any manner they saw fit, any sum of money not exceeding one-third of its capital, or of its assets. Under that vicious and pernicious provision, one-third of the bank assets taken and loaned, how? Loaned out temporarily upon Pacific Mail Steamship stock, loaned out in Syracuse Water stock, loaned out in stocks of every city, village and town, every railroad, every scheme, however chimerical, under that clause the money of the depositors has been loaned. Why, if the Senators would take even the trouble to look over the last report of the Superintendent of the Bank Department, and see even some of the best banks of this State, under that pernicious and destructive provisions of their charters, have loaned their money, why they would be surprised that the Legislature should permit such a thing. I can call your attention to at least a dozen banks of this State that have at least from \$200,000 to \$400,000 invested in worthless stocks, and have taken papers that are not worth the paper they are written on as a security for the loan. What is the superintendent to do? You, as a Legislature, have authorized the bank to do it. I do not propose, gentlemen, to single out banks. I am not here to sound any alarm to the community that savings banks are unsafe. The time probably will come when there will be alarm enough. It may be the result of this investigation; it may be that this investigation has called the attention of depositors to the insecurity of their money, that will produce more disastrous results, than twenty Third Avenue banks. Let depositors understand that the assets of banks, invested in mortgages or otherwise, on account of the shrinkage in value of real estate, that, if wound up there must be ultimate losses, and depositors cannot be paid, if the banks are forced into bankruptcy. Depositors then may become alarmed by this investigation, and there may be precipitated upon these

beneficent institutions a danger and disaster that was not contemplated when this investigation commenced. But I was calling the attention of the Senate to this investigation, and I invite that when this investigation is ended, that Senators, as a mere matter of curiosity, will look at some other reports of some of these savings banks, and see the large amount of money invested—I don't use the proper term; *loaned*—upon worthless collaterals that cannot be used. But how is this superintendent to avoid it? The collaterals are worthless. They have lost the loan. The bank becomes embarrassed, and it goes into insolvency and liquidation. You are charging the superintendent. Now, gentlemen of the Senate, you look at these reports also. You may look at the reports from 1867, down to 1877, and you will see the earnest protests, appealing to you as guardians of these savings funds, to remove from the charters—to remove from law this poison, this virus in the charter, which must certainly ultimately produce disease and death. And I say you may take the history of every savings bank that has failed in this State, and you can trace it directly to this available fund clause in this charter. What was the cause of the disaster of the Third Avenue Bank? Does any man around here pretend it was fraud or mismanagement of the institution? If there is any such man around here, he had better undeceive himself, from the testimony in this case as quickly as possible, \$1,200,000 loaned by that bank upon Pacific Mail Steamship stock. This available fund clause gave them the right. In less than a week after that loan, that stock went down, depreciated, till it had no market value at all; taken as a collateral. The party who made the loan became embarrassed and temporarily insolvent, and the result was that the bank had to take the Tarrytown property, had to take the Fifth avenue property, had to take the largest portion of the real estate which, when the shrinkage commenced, carried into the vortex of bankruptcy—directly traceable—all the disasters of the bank directly traceable to that provision in its charter. Still the superintendents, Schuyler, Howell, Ellis, constantly pleaded with you to pass a law to prevent such vicious proceedings. You passed it, gentlemen, all unheeded you suffered the tree to grow, you suffered the fruit to ripen, and now we are receiving the results, and for these results you have placed a bank officer upon trial before the people of the State. Now, this People's Bank had this available fund clause, and here, then, was the seed of dissolution implanted in it. This People's Bank ran along down to 1875, having been watched, having been guarded, having been reported informally by Reid to the department from time to time, till the regular examination of 1875, when the examination of the examiners then showed a small deficiency, and that deficiency was subsequently made good. It ran along till the year



1876, without going into details, Reid watching that bank and reporting to the department from time to time. The department took action, as exigences required, until in the summer of 1876, the superintendent was of the opinion that he had nursed that bank a sufficient length of time, that there was no possibility or probability of success, and directed that the Attorney-General should close it according to the forms of law.

Now, in this case I put this question to each individual Senator, where was there an omission of duty upon the part of Mr Ellis? I put the same question in the Mechanics and Traders' Bank on what portion of the evidence, in that case can you, each individual Senator, conscientiously say that Mr. Ellis neglected to perform any duty, any act, which the law required him to perform ?

Take every bank ; and understand me gentlemen Senators, I ask upon the evidence of this case, all of the evidence in this case, not upon statements of counsel, but upon evidence in the case, whether you can conscientiously say upon any of the banks, leaving out the Third Avenue Bank, that Mr. Ellis has neglected either honestly or otherwise, to perform any duty which the law imposed upon him to discharge. The counsel for the State has prepared a digest for the use of the Senators and had it printed. It may be that the counsel for the State is employed simply here to convince the Senate, that Mr. Ellis has been guilty of culpable negligence. It may be that they are employed as in the capacity of counsel who goes into court for a client, bound to succeed, regardless of right, regardless of wrong. It may be that they are employed upon the part of the State to present an *ex parte* statement here, to conceal other facts. It may be that their retainer authorizes and directs them to present to the Senate such portions of the evidence as tends to inculcate Mr. Ellis, and leave from their analysis every portion of the evidence that tends to exculpate him. Whether such be their retainer or not they have performed that act. Where Mr. Ellis has given you statement, Senators in regard to these banks, that he went in person to New York, that he had interviews with their officers, that he required certain acts to be performed, and those acts were performed, do you find any reference to those acts on the brief of the counsel ? Mr. Lamb stated here on two or three occasions that that was all the correspondence in the department upon the subject. The counsel in his analysis, has reference to this statement of Mr. Lamb, but in the succeeding statement of Mr. Lamb he tells that Mr Ellis went to New York in almost all these cases and had personal interviews. What those personal interviews were he knows not, but to that portion of the testimony the counsel for the State sedulously avoid to refer to Mr. Ellis' direct testimony of his visits to New York, of his actions at New York, there

is not even the slightest reference alluded to in this long printed document which the counsel for the State has produced before you. Now, I submit, when the learned prosecutor, high learned and distinguished counsel, sent here by the government of the State to represent its people; when they present such a garbled *ex parte* statement as they call an analysis, whether that it is in the proper exercise of an impartial duty which they owe to this State. Does the counsel believe that it is a part of their duty in this deceiving, misleading paper that they have got up here, to deceive the Senate with reference to the testimony, it is in the line of their duty, in the line of their retainer, in the representation of the State in this proceeding? It struck me that if the counsel was going to prepare a printed analysis of the testimony; to refer to all of it; to have an impartial reference and an impartial review, and from that present to the Senate such conclusions and such deductions from the testimony as they saw fit. Now, I have stated, gentlemen, in relation to this People's Bank, and I have asked the Senate if there were no other bank before you but the People's Bank, what act you would say, acting as Senators here upon the solemnity of your oath, that Mr. Ellis had omitted to perform in the exercise of his duty. Take the case of every other bank. What act can you say, that is, from the proof that has been adduced before you and presented and now before you for consideration, what omission of duty in any of these cases, except the Third Avenue Bank. Of course when I speak of the others we leave that, for it is understood that he has omitted to perform. I have looked over this testimony with the utmost care. I have looked it over since the counsel have presented their analysis to the Senate. I have referred to the testimony, to the pages of the testimony which they cite, and I have referred to the testimony of Mr. Ellis, Lamb, or any other man and you will find and agree with me that there is a perfect explanation to every particle of testimony which the learned counsel for the State has presented to you, perfectly, satisfactorily, and instead Mr. Ellis simply, gladly firmly discharged this duty imposed upon him by law, he has exercised a degree of watchful care over all these banks unusual, unprecedented in the administration of this department. I challenge the counsel for the State, I invite the attention of any Senator to compare the administration of this department by Mr. Ellis with any man who ever held that office from the organization of the Bank Department down to the present time; and I repeat here, and I repeat it without the fear of contradiction from any intelligent quarter, that there is a most favorable comparison with the faithful, diligent, conscientious discharge of the duties of this office by Mr. Ellis with any other man, not excepting one that ever held this appointment, as can be seen by looking over and studying and examining the history of this Bank Department from its organi-

zation. I might, gentlemen, express to you, but I must be prudent in saying it, that the most wicked, outrageous persecution, under the name of a prosecution, that ever was initiated, commenced and prosecuted against any man, is now being conducted against De Witt C. Ellis for the performance of the duties of that office. Whatever the result of your deliberation may be, whatever may intervene between now and the end of my existence, the impression never will be removed from my mind that this prosecution, this investigation, instead of having any merit, is a most wicked and damnable conspiracy to destroy the character of a man who has administered the duties of his office with faithfulness and with fidelity to the people.

Now I must be pardoned for making another illusion. You look over the reports of Mr. Ellis for the past two years, and there has not been to the Legislature of this State, in it or out of it, a more learned, comprehensive disquisition upon the finances of the State, and upon the finances of savings banks, and the rule which should govern them, than in his messages to the Legislature. Have you heeded them? To travel a little out of the record, I do not think that, although his views and his recommendations received no attention at the hands of the Legislature of the State of New York, they did receive attention from the Senate of the United States, and the report and the suggestions of Mr. Ellis as contained in his report to you was made the basis of a speech by one of the distinguished Senators in the discharge of his duty as a Senator of that body. They did not pass for naught outside of the borders of our State. They were approved as worthy of adoption, worthy of disquisition and worthy of criticism; but the Legislature of the State of New York did not see fit to give heed to his recommendations, did not see fit to provide the safeguards against these improvident acts of the savings banks, and for that act he is now placed on trial before you.

Now, there is one other subject that I will call your attention to and then I will close. I desire if the Senate please to call its attention to the law under which this investigation has been ordered. It is claimed that the Senate obtained jurisdiction in these proceedings under that section of the statute, "All officers appointed by the Governor, with the consent of the Senate except the chancellor, justices of the Supreme Court and circuit judges may be removed by the Senate upon the recommendation of the Governor." That act was passed, it seems, in 1823, and what was the purpose of the passage of that act? The Constitution of 1821 gave the appointing power of all administrative offices to the Governor and the law made the term of office of the appointee depend upon the term of the Governor, except chancellors, justices of the Supreme Court and circuit judges, who were appointed until they attained the age of sixty. The Gov-

ernor, to hold his office for two years, the Secretary of State appointed by him to hold his office for two years, the Comptroller, two years, the Surveyor-General, as he was then called, for two years, every administrative officer appointed by the Governor and going out upon the expiration of the term of office of the Governor. But they were appointed by the consent of the Senate, and hence the law provides, there being some power of removal or should be some power, that the Governor being the appointing officer, with the consent of the Senate, and that officer's term not extending over the term of the Governor, the Governor may have made some mistake in his appointee, and he asks the Senate to do what? They had confirmed and he asks them then to reverse, to review, to annul the action of confirmation. But that statute always applied, and must necessarily apply, to the man that the Governor himself appoints and to anticipate the question, when the Governor don't appoint a man, can he ask the Senate arbitrarily to remove him? I shall have occasion to refer to that in a moment. I merely now wish to fix the mind of the Senate, upon the fact that in 1823, all these administrative officers were appointed by the Governor, and their term of office did not extend beyond the term of office of the Governor himself, and during that term, power was given to the Governor to recall from the Senate an appointment that he had sent into it. There was the condition of things in 1821, but in the Constitution of 1821, it was provided that these officers, should be appointed with the consent of the Senate. The statute follows the constitutional language "*with the consent.*" That remained down to 1846, that there was no Governor, that had occasion to invoke the provisions of that statute, by asking one of his appointees to resign, and neither was there any occasion from 1821 to 1846, for any Governor, to ask the Senate to remove any men that the Governor himself had sent in for confirmation. Now, we come to 1846, when new provisions were adopted. Those provisions were that all these administrative officers should be elected, no longer appointed by the Governor, but there were certain classes of officers to be appointed by the Governor, but you will look at some provisions of the Constitution of 1846, the officers of the militia, major-generals, inspectors, etc., of the Governor's own household, it is provided that those officers may be appointed by the Governor, with the consent of the Senate, using that precise language, that they shall be appointed by the Governor with the consent of the Senate. In other provisions of the Constitution of 1846, and, for the first time in the history of this State, where the words by and with the advice and consent used. It was provided in that Constitution, that it should go into effect on the first day of January—some portions of it—that the justices and the chancellor, and the circuit judges, then in office, shall hold office

until the time indicated, but if there should be a vacancy occurring before the expiration of that time, then it was provided that the vacancy should be filled by and with the advice and consent of the Senate. So the Constitution uses both terms, one class of officers to be appointed by the Governor, with the consent of the Senate, and then vacancies of high and important offices should be filled by the Governor, by and with the advice and consent of the Senate. Now, words in constitutions are not nominally used. They have a purpose, and it is supposed that the framers of the Constitution use words in their ordinary signification, and with a design and purpose to secure the end for which the words are used. Then, why do they provide that when the Governor wants his own military staff appointed, that it shall be appointed by the Governor, with the consent of the Senate, and when they come to high and important officers of the State, that they shall be appointed by and with the advice and consent of the Senate. There was a reason for this distinction in this constitutional requirement, and that reason it will be my province and purpose to call your attention briefly to. We will have to go back to that. In the Constitution of the United States there it is provided in all cases that appointments shall be made by the President, by and with the advice and consent of the Senate. It is provided that the treaty-making power is lodged in the President by and with the advice and consent of the Senate; all acts which are to be performed conjointly by the President and Senate of the United States, it is expressly provided, are to be performed by and with the advice and consent of the Senate. Now, what do the words "by and with the advice and consent" mean? You look at Story's Commentaries on the Constitution. You look at Kent's Commentaries, and you will find the construction and the provision, to wit: Then when the power is given to the Senate in conjunction with the President, that the appointment is to be made, the treaty is to be made "by and with the advice and consent" of the Senate, that the Senate is a species of executive council. That is what commentaries on the Constitution tell us. They have a right to advise with the President. They are a part of his council, and that is the reason the word "advice" is put in there; that, when an appointment is sent in by the President under that clause, the Senate has the power to advise. When a treaty is sent to the Senate of the United States for confirmation or rejection, they have a right to advise; and there is not a man around this circle but what knows that, within a very short period back in our history, that when the President sent in a treaty to the Senate of the United States for confirmation, the Senate refused to confirm that treaty unless the President would adopt a certain amendment or provision which the Senate itself inserted. They gave the advice to the President, that

“this treaty is wrong, Mr. President; we will not consent to it, unless you take our advice by incorporating in that treaty the provision which we now hand to you.” Why, the Senate had as much power under that clause, “by and with the advice and consent of the Senate,” as the President himself. “By and with the advice and consent” presupposes an advisory power. This is not a technical or a forced construction. I have called the attention of the Senate to the commentaries upon that branch of the Constitution. There is an opinion of the Attorney-General on that subject on file, where the Attorney-General, in construing that clause, says that the words “by and with the advice” makes the Senate itself a part of the appointing power; that they have a right to advise; a right to make suggestions; have a right to send their advice to the Executive for the purpose of his consideration — whether he will adopt or whether he will reject. In other words, it is a mutual action, mutual advice upon the part of the Executive and Senate, where these words, “by and with the advice of the Senate” are used. I, therefore, have shown you that the Constitution of 1821, [by way of recapitulation, authorizes the Governor to appoint administrative officers by the consent of the Senate; and all these administrative officers at that time, expired with the term of the Governor himself; and that the object of this provision of law was to enable the Governor to remove one of his own appointees; and that is the reason, and I am happy to say, that I agree to the fullest extent with the distinguished Senator from the Thirteenth that this provision of the statute has the construction which he gave at an early stage of these proceedings, that the Governor naming his man, sends him into the Senate, the Senate affirms; the Governor finds his own man afterward not fit, incapable, or for any other reason, simply asks the Senate to remove, to reverse, to annul the action, the confirmation to do the same thing in regard to the removal, as they did in the act of confirmation, and *that* they can do without giving any reason at all; it is not necessary. Upon the recommendation of the Governor they could do it. They need be satisfied with the recommendation of the Governor. They may not go any further. The Governor in this case (assuming that the Governor had power to ask for the removal), the Governor in this case says that he is satisfied from the *ex parte* and as it now turns out, false and perjured statements of the complainants, that Mr. Ellis had been guilty of neglect, that he has heard Mr. Ellis’ statement, that while the statement excuses him from any intentional wrong, it don’t excuse him from culpable neglect of duty, and he therefore asks the Senate to remove.

Now, the Senate might have stopped right there. They might have adopted the advice of the Governor, and removed, provided they have

the power, under this section, or they might not have concurred in the recommendation of the Governor, or they might adopt any way to get information. They might not be satisfied with the Governor's statement of facts. They may want to make other inquiries, and they may make them, and they may become satisfied from outside inquiries, that the officer may or may not be removed. But now, does this statute apply to the case in hand. In 1852, the Bank Department, was created, providing for a superintendent to exercise and perform its duties. How is that officer to be appointed? Is it provided in the act that he shall be appointed by the consent of the Senate? Why, the very first words of it read that he shall be appointed by the Governor "by and with the advice and consent of the Senate." That is made the point "by and with the advice and consent," and I think, I may be mistaken, but my impression is that this is the first time in any statute of this State where it is provided that a public officer shall be appointed "by and with the advice and consent of the Senate," all before that time, that they should be appointed "by the consent" of the Senate. Here, for some reason or other, the Legislature changes it, and provides that the officer shall be appointed by and with the advice and consent. Now, are those words synonymous, with the word "consent?" Do they mean any more, do they mean any less, or are they the same? "By and with the advice," — are they superlative words in this statute, when the Constitution itself of the State has drawn the distinction — has provided that vacancies in the offices of judicial officers should be filled "by and with the advice and consent of the Senate," and inferior officers should be appointed by the Governor "with the consent" of the State alone? When they are used in the Constitution, when they are used in the statute, are they superlative words without any meaning at all? Why, the presumption is that every word used in the Constitution is to have its appropriate meaning. A like presumption exists as to the statutes, that every word where the word is not directed to any other provision of the statute is to have its proper, fixed and definite meaning. They are not to be rejected arbitrarily. They are to receive a proper construction, and when the Legislature interpolated these words "by and with the advice," they meant something; they meant not only something, but they mean a good deal. I have already averted to the construction which Story and other commentators have put upon them, that they convert the legislative body into a quasi executive council — just these words "by and with the advice," alone. Now, if that be so, this officer being appointed, standing right there, "by and with the advice and consent" of the Senate, how does he fall within the condemnation of this statute, which simply authorizes the Senate to remove an officer when that officer is appointed

by the consent of the Senate. But we follow it still further. You have recently adopted a provision in your Constitution that the Superintendent of Public Works shall be appointed by and with the advice and consent of the Senate. Your Superintendent of Prisons shall be appointed by and with the advice and consent of the Senate. Whatever the practical workings may be, and, Senators, do not understand me, that I am talking about practical workings, where you have a Governor of one political faith and a Senate of another political faith — do not understand me that the practical working of it, that there is peace and harmony and counseling and advising. But the theoretical portion is, the theory of the Constitution, the theory of all laws, all constitutions using these words is, that there is community of feeling, whatever may be the political bias, the political notions of the respective bodies themselves, that those political feelings are all absorbed and belong to the public good. That is the theory of our government. And hence, these words, that the Senate may be an executive council with the Executive to make nominations, to make treaties, to make appointments, have a meaning and a deep significance, and are based upon the very stronghold rock of our government itself, however much it may be departed from in principle. But in construing laws or in construing statutes, as a matter of course, we must not construe them as to how they may be used. They must be construed as to the manner in which they are worded, and the purpose for which they are intended.

Now we pass along down. This bank superintendency was an office unknown to the law at the time that this act of 1823 was enacted. It was an office created subsequent to the passage of this act, and the express and specific mode of its creation and appointment was provided by statute, and it can only fall within the terms of this statute by a forced and a retroactive construction if it can get there at all. But things remained in this shape until 1867, when the Legislature saw there was no law in effect, which authorized removals under the then existing state of things, and they passed a law in 1867, providing that the Bank Superintendent, the Insurance Superintendent, and officers appointed by the Governor, by and with the advice and consent of the Senate, should be removed by joint resolution of both houses. There is where the power of removal is in this office. The Legislature creates an office, and subsequently provides for the manner of removal of the officer. Now has the Legislature of 1867 made provision for the removal of this officer by joint resolution of both houses? Where is the power, as expressed in that act, that the Senate can act as a separate body for the purpose of removal? Why, you have attempted a removal under the act of 1867. Mr. Miller of the Insurance Department, was not presented to the Senate for trial. No Governor asked



the Senate to remove George W. Miller from the office of Insurance Superintendent, but the Legislature did. Its committee entertained jurisdiction. Complaint was made to the Legislature, and a resolution — a joint resolution — was introduced in 1871 or 1872, in which the Legislature sought to remove Miller from the office of Superintendent of the Insurance Department. Of course, Miller resigned before any result of the action of the Legislature. I say that the joint resolution was introduced. It was referred to a judiciary committee of both bodies. It was there heard and discussed, and the Legislature assumed and recognized its right under the act of 1867 to remove the head of the Insurance Department by joint resolution. It was there assumed by the best legal minds of that day that there is where the power of removal of that class of officers was vested, that the removal power did not lodge, nor was vested in the Senate of the State of New York under this act of 1823, but it rested and was vested by the act 1867 in the Legislature, and there was a propriety in it, as Senators will see. The Legislature had newly created this office, and the term of office of the incumbent extended beyond the term of office of the appointing power. The Governor was elected for two years. The superintendent was appointed for three years. The Superintendent of the Insurance Department's term of office was fixed at three years, and one year of his time extended beyond the term of the Governor that appointed him. Now, I will illustrate by this case. Governor Dix appointed Mr. Ellis. The Governor knew Mr. Ellis' fitness and qualifications for the office. He was of the same political faith as the Governor who made the appointment. Now, suppose, as it did occur once, that in 1874, a Governor of the opposite political faith was elected, as he *was*, and suppose, at some time in the fall of 1874, a Senate of an opposite political faith was elected. There you have a Governor and a Senate, then, of a political faith antagonistic to the political faith of Mr. Ellis. Now, under this act of 1823, what are you going to do? Mr. Tilden asks the political majority of his friends in the Senate to remove Mr. Ellis. He does, and his political friends responds to his recommendation, and thus making the tenure of an office which the statute has fixed at three years depend upon a partisan majority of the Legislature. Now have you got any such laws upon your statute-book? That is the effect of it, and if there had been a democratic Senate elected in 1874, as it was predicted there would be, and was — I have forgotten, but it was not; but, as I was saying, gentlemen, with all sincerity, for the purpose of showing the application of this statute: Here the Bank Superintendent has been appointed for three years; he has held two years of his term; he finds the Governor then inaugurated antagonistic, politically, to him. He finds a Senate of the same political faith as the Executive, and the Governor asks his political friends in

the Senate to do what ? To shorten Mr. Ellis' term of office—turn him out of office. What for ? By this act of 1823 he is not bound to give any reason. Why, he asks him. He says, I am the appointing power ; I can remove ; I am going to do it. The Governor asks it. We are going to turn a republican out and get a democrat in his place. Now, there is the working of it ; and if you allow, gentlemen of the Senate, this thing to be done, if you claim jurisdiction under that statute of removing any officer, the practical result in the future will be that this class of officers, whose term of office extends beyond the Governor's instead of depending upon an honest and effective administration of the duties of the office, will depend upon political and partisan victors. Now, it is a thing that might return to plague the inventor. A democrat may hold this office. You may turn Mr. Ellis out to-day, if you please, and you may put a democrat in his place ; but, in course of time, there may be a republican Governor, and there may be a republican Senate, and your democratic appointee has not served out half his term ; but the Governor asks his political friends to turn a democrat out, so as he can have the spoils of victory. Now, I am a believer in that doctrine gentlemen, whatever they may say about civil service reform. I believe fully the old Jacksonian doctrine that "to the victor belongs the spoils." I believe that if a political majority succeed they are entitled to the offices, they belong to the men that won them, and not to their enemies, and I believe that any political party that can fairly and honestly get their friends into office, to do it ; but I condemn, I repudiate the perversion of law to do it. I denounce any attempt on the part of any party to cover up a partisan act under pretense of following a law and a statute. If they can get the office honestly and fairly, I say amen to it, and I will go with them. But the system of using the cloak of law to secure partisan effects and partisan results, is a thing to be reprobated. I never was a believer in the doctrine of "stealing the livery of Heaven to serve the devil in." I never was a believer in the doctrine of prostituting law, prostituting justice, prostituting right that political results might follow. But you see, such is the practical working of the construction which is attempted to be given, and hence, when the Legislature in 1867, saw the practical workings of this law of 1823, saw that a man's term of office depended upon the uncertainty of political majorities, they provided, that the officer, if removed at all, should be removed by a joint resolution of both houses. And I now submit to you Senators, upon this branch of the case, that in my own matured judgment, from an examination of all these provisions of the statute that you have no right to pass a vote of removing De Witt C. Ellis, any more than I have. The power belongs to you in conjunction with your co-ordinate branch of the Legislature and not with you alone.

Senator SPRAGUE — Cite us the section and the precise language of it.

Mr. McGUIRE — Volume 1 Laws of 1867, chapter 335, page 753. “Whenever vacancies shall exist or shall occur, in any office of this State where no provision is now made by law for filling the same, the Governor shall appoint some suitable person who may be eligible to the office so vacant or to become vacant, to execute the duties thereof, until the commencement of the political year next succeeding the first annual election after the happening of the vacancy at which such officer could be by law elected. And the person so appointed to fill such vacancy shall possess all the rights and powers, and be subject to all the liabilities, duties and obligations of such officer, as they are now or may hereafter be prescribed by law; provided, however, that when a vacancy exists in the offices of Secretary of State, Comptroller Treasurer, Attorney-General, State Engineer and Surveyor, Clerk of the Court of Appeals or Canal Commissioner, or a resignation has actually been sent in and accepted to take effect at a future day while the Legislature is in session, the two houses thereof, by joint ballot, shall appoint a person to fill such vacancy, actual or prospective; and any person appointed by the Governor, by and with the advice and consent of the Senate, whether in case of vacancy or otherwise (except State Prison Inspector), may be removed from such office by concurrent resolution of both houses of the Legislature. On such removal both houses shall, by joint ballot, appoint a person to the office made vacant thereby.”

Now, I have already submitted to the Senate that, under that law, the only way a person appointed by and with the advice and consent of the Senate can be removed, is by joint resolution, and the only way the vacancy can be filled is by joint resolution at the time that the removal takes place.

Senator PRINCE — Does not that deprive the Governor of the power of appointment?

Mr. McGUIRE — By the provisions of the statute, where the Senate is not in session, the Governor may fill the vacancy. This only provides for filling a vacancy when the two houses make a removal. If the two houses make a removal, then they shall at the same time fill the vacancy by joint resolution, but if the vacancy occurs when the Legislature is not in session, then, by the general provisions of the statute, the Governor fills the vacancy. And I have submitted to the Senate that Mr. Ellis is not subject to the jurisdiction of this body at all. Mr. Ellis has not been appointed to this office by the consent of the Senate. He has been appointed to this office in the language of this act of 1867, by and with the advice and consent of the Senate. I have submitted to the Senate that the object of the act of 1823 is

simply to enable the Governor to revoke his own appointments. Well, the idea of an administrative officer's term extending beyond the term of the Governor that appointed never had any inception until about 1852 or 1853. Then an innovation was made. Up to that time all appointments by the Governor depended upon the term of office of the Governor himself, and this act of 1823 in such cases gave the Governor the power to ask the Senate to remove, but about 1853, a new practice was instituted by the Legislature creating officers, extending the term beyond the appointing power itself, and the first act that they did, the first officer that they provided for his appointment under that departure from the old practice, they provided in the very first act itself that the officer should be appointed by and with the advice and consent of the Senate. Now, it is something more than a mere coincidence, something more than a coincidence when up to 1852 the term of office of an appointee expired with the term of office of the appointing power, and in 1852 and up to that time the Legislature using no other term only "by the consent of the Senate," in 1852 for the first they created this office of Bank Superintendent and provided that its term should be for three years, one year longer than the Governor, and then for the first time in the history of legislation, inserting the words "by and with the advice and consent of the Senate," and then, thus having created this new office with an extension of term beyond the term of the Governor himself, having used this term that the appointment should be made by and with the advice and consent of the Senate, subsequently created the Insurance Department, using the same terms, other important State officers all having the same terms. But in the end, the Legislature, finding that there was no provision for the removal of such officers that they did not fall within the terms of the statute of 1823, comes in with this act that all officers appointed by and with the advice and consent of the Senate may be removed by joint resolution of both houses. Now, there may be a criticism upon the word "may." What other word could be used? Could they use a mandatory word, in there, that all officers appointed by the Governor *shall* be removed? Why, would a Legislature think of passing a law directing the Legislature to remove a man, before they conferred the power in 1867 that, in a proper case, the Legislature may remove, and that was the declaration of power in the Legislature itself for the exercise of the power of removal. Then how can it be, Senators, that when the Legislature have thus acted, thus created an office, thus extended its term beyond the term of the appointing power, adding new provisions to it, providing something more than a consent of the Senate to the confirmation adding that it should be with its advice, and at a subsequent period, providing as to the manner of removal, I ask you how it can be that this officer falls

within the act of 1823 that the Senate may remove upon the recommendation of the Governor where the officer has been appointed with the consent as well as advice of the Senate. The act of 1823 was never intended to apply to an officer that the Governor had not appointed. The thing was unknown in that day of an officer holding an office beyond the term of office of the Governor who appointed him, and therefore there could have been no application of the rule which has been invoked in this investigation, that this Senate can remove an officer upon the recommendation of the Governor, who did not make the appointment. Why would it not be an uncertain tenure for public officers in this State to hold office? When Governor Dix appointed Mr. Ellis to this office, Governor Dix had confidence in Mr. Ellis' ability and fitness and capacity, his honesty and integrity for the two years that he held this office? Tilden held this office for two years, and if there had been any wrong, if there had been any mismanagement in that office, we all know that it would have been thrown with a calcium light upon it to the public, through the reform of the administrative abilities of the then Governor. He had confidence in him. Tilden never complained of Mr. Ellis, even after Mr. Ellis' term expired in 1876. Tilden did not ask you, gentlemen, to remove. Why, he was satisfied with his integrity, he was satisfied that he was administering his department in the interest of reform, and he did not want any other man in there, and he never for once asked the Senate to turn the then incumbent out, and he never sent any communication to that body, asking that he should be turned out. But it runs along till 1877, when there has been one intervening Governor passed out, and the present Governor comes into office that knew nothing whatever of Mr. Ellis, had nothing to do with his appointment and he asks, you, gentlemen, upon some pretext or other to remove him from the office he holds. Now, that statute of 1823, was not passed for any such purpose or intent. If the statute of 1823 had any application at all, which I have denied, but if it had any application at all, the only application it could possibly have, during the two years of Governor Dix's term, that he should have asked the Senate to have revoked his action. Now, I do not assume that this Senate is anxious to assume power about which there is any doubt of its possession. I do not apprehend that this Senate is so anxious and so eager for the blood of Mr. Ellis, that it is going to assume doubtful powers, for the purpose of getting that blood. What would be the result of it? Suppose Mr. Ellis should refuse to obey your order if you make any, what is to be done, what are you going to do about it? How is your order to be enforced? If Mr. Ellis should adopt the view of this statute, which his counsel entertains, how are you going to get him out of this office? And this puts me in mind, and I am very glad that it

did. The counsel for the State, in opening this case, before you stated that all this trouble and all this expense was brought about by the persistency of Mr. Ellis in holding on to this office. Where is there any authority for any such statement? What has Mr. Ellis done; what has he indicated that he wants to hold on to this office. His term expired in 1876. The then Governor did not see fit to send to the Senate the name of his successor. Suppose Mr. Ellis had resigned; what then? Resigned an office that he didn't hold, simply holding over? His term had expired. Why was he to go out? Where did he show any persistency, any desire, and clinging to it or its temporary emoluments? Why didn't the Governor, then, after his term of office had expired, send in his successor to the Senate for confirmation; and why are you charging to Mr. Ellis the neglect of the Governor himself? Soon after, in the fall of 1876, why, for some reason and for some purpose, charges of the most malignant character and type were circulated in all the cities, towns and hamlets of the State, charging Mr. Ellis with the gravest derelictions of duty in the administration of his department. Then it became a time that Mr. Ellis could not resign. As long as he was resting under the imputation of dereliction of duty, how and with what propriety, with what justice to himself could he resign and virtually admit the truth of these malicious, libelous publications against him? Mr. Ellis, then, from the fall of 1876, had to stand and meet the attack of his adversaries; and he would have been less than a man — he would have been more than a coward — if he had sneaked out Belknap-like, under a resignation, for the purpose of escaping a scrutiny of his acts. When these acts, when these charges were made against him, he invited, and he now invites, the closest scrutiny of every act committed by him as the incumbent of the superintendent's office, not with a desire, Senators, to hold the office. I may be out of place in stating to you that, if these miserable, lying charges hadn't been made against Mr. Ellis, you would not have been chargeable with the investigation of his conduct. The office has no charms for him, and has had no charms for the last year or two, at least since the expiration of his term, and whatever the result of this trial may be, whatever the result of your action, you may pass an order of removal if you please, and, as far as you can, remove him or acquit him of any intentional wrong; I say I may be out of place in stating to you that whatever the result may be, whether favorable or unfavorable, Mr. Ellis will not occupy this office for twenty-four hours thereafter. I, therefore, repel the accusation of the counsel that Mr. Ellis, for the purpose of hanging on to the office, is putting the estate to the expense of this investigation. If you, sir, had withdrawn your charges, if you had withdrawn the imputations against his administration, and against his character as a man, if you had not thrust

him before the people of the State, when the Senate had rejected an appointee, even if you had permitted them to remain buried and unresurrected in the executive tomb of the Capulets, Mr. Ellis would not have been superintendent to-day. But, when you force upon him the alternative of conceding the truth of these charges, or meeting them boldly and like a man, he chooses, man as he is, the latter alternative, and challenges you to investigate by all the power of the State at your command, by all the treachery of his malicious officials, to drag to light every act whether public or secret, and when you have done with it Mr. Ellis is content to go to the people of the State. Whatever the action of the Senate may be, dictated in any manner as it may be, the record of this trial is satisfactory to him, satisfactory to his friends, satisfactory to every reflecting man that he had one purpose, one object in view. That purpose, that object is accomplished in a pre-eminent degree, of discharging the duties of his office with more fidelity, with more intelligence than any other man that ever occupied this office, since its creation, present company not excepted.

Now, Senators, I have taken up a good deal of time, and, no doubt, I have exhausted a good deal of your patience. There has been such a mass of testimony, of 2,000 pages here, that it has been impossible to discuss only in a general, discursive manner. There have been many questions involving constructions of statute, which, without time for preparation, counsel for Mr. Ellis could only give you their views of the law of the particular cases, not of the particular statute. That having done, and having submitted to your consideration all the facts, all the law, the respondent respectfully and earnestly urges upon you to consider, ignoring, disregarding, any consideration of a personal or political character in its investigation, in its determination. It may be, Senators, that there is a Moloch stalking through this hall that demands a sacrifice, and it may be that DeWitt C. Ellis is to be the victim for immolation, but let me tell you, Senators, that there is always an avenging Nemesis that follows in the wake of such decapitations. There is a power above, beyond, the needs of the hour, above, beyond, all party interests or partisan dictates, and that power, when it is seen to fall, is veritably the "*vox populi, vox Dei*," and that is, the sober second thought of the people. Popular clamor to-day may demand the execution of a man; to-morrow, the sober second thought comes and condemns to-day what it approved yesterday. And I invoke, Senators, I invoke that all outside, extraneous considerations, should be ignored and discarded in the strict investigation and determination of this case, and the judgment to be placed upon the facts and the law together. There have been instances in our own history recently, where there have been condemnations forced by outside influences, by unreasonable clamor, by insensate preju-

dice. Who is there, and what reflecting man is there in the United States to-day, but what wishes the stain and blot on the country's history was wiped out, and black lines drawn around its page, of the execution of that unfortunate woman, Mrs. Surratt, forced on by unthinking, clamoring, and unreasonable prejudice. But there are other instances. Take this case of Mrs. Surratt, how many hearts, how many reflecting minds in the United States to-day would earnestly, and tearfully repeat what was said of the oath of Uncle Toby, that the accusing angel flew to heaven's chancery and blushed as he gave it in, and the recording angel as he wrote it down, dropped a tear upon the word and blotted it out forever.

There is no reflecting mind to-day but wishes that some kind recording angel would drop a tear upon the sentence which was provoked and demanded by insensate clamor. But the sober second thought has come to-day. We can all see the error that was then committed. There may be such a thing—there may be something permeating this atmosphere. It may be personal, it may be political, it may be one thing or the other. There may be, I say, an unreasoning prejudice which demands the immolation of this respondent; but, Senators, let me say to you that some day or other, the sober second thought will come to the people, and they then will demand to know the reason of your summary decapitation of a man whose record showed that he discharged his duties with fidelity, with honesty, and with promptitude.

Senator BIXBY — I understand Mr. McGuire to state in his closing argument the expense of this investigation was some \$1,000 a day. I think it is due to the Senate and truth to say, that the expense, so far as compensation is concerned, amounts to \$395 per day. The expense of printing which is small, will bring it up somewhere in the neighborhood of \$500 a day, I do not think the impression should go abroad that the expenses are \$1,000 a day, when they are in the neighborhood of \$500 a day.

#### CLOSING ARGUMENT ON BEHALF OF THE PROSECUTION.

CHARLES TRACY arose and said — Mr. President, the Senate has been entertained by the learned gentleman for a long time and with a great variety of discourse, sometimes eloquent, sometimes witty, and sometimes metaphysical. A bolder stater exists not, as shown by the exhibition that we have had here this day.

The conclusion, at least, that this respondent's memory is to be perpetual for the faithful performance of his duty is wonderful. Right on the heels of this comes the declaration that he would fly



out of office on the first opportunity, being sick of it; that he would resign within twenty-four hours, even if acquitted by the Senate. Things that are well done are pleasure to the doer, and those that serve the public well are willing, and ought to be willing, to give their experience for another term, if called by their fellow-citizens to the place, so that the State may have the benefit of tried and approved public servants.

The intention of the statement of the counsel that Mr. Ellis would not hold the office for twenty-four hours after this proceeding is over, may be guessed at. Possibly it is to make the Senate think: "What is the use of turning out a man when he is going to resign?" Perhaps it is something else; and the Senators must judge of that, and judge whether they are to be influenced by a thing of that sort, after an investigation of a month, when he could have resigned at the commencement. It was rather late to come in at the summing up and say: "I won't hold this office twenty-four hours after this proceeding is over." Why, then, have this proceeding?

But now, at the close of the argument, it is claimed that the Senate has no power to remove the Superintendent of the Bank Department; that the statute has been repealed. The repealing act is not found, but counsel insists that the Legislature has passed a law at one time, that any person holding an office by appointment of the Governor and consent of the Senate, may be removed in this manner, and, afterwards, has made another law that the same person may be removed, without consulting the Governor, by the joint resolution of both houses of the Legislature; and the *second one repeals the first by* implication. He did not *quite* say that, but he left you to infer it. I am happy that I have twenty lawyers before me in this Senate, and I need not argue that point any more than I should argue to a layman that there can be two roads from one town to another, running in different directions, and both arriving at the same end. The proper distinction between the two proceedings is this: If the Governor is not in concert with the Legislature, and the two houses of the Legislature are in concert with each other, the Legislature can remove an officer of this kind by joint resolution, without investigation; and, what is more, they can appoint a successor by joint resolution, without consulting the Governor. That statute was put there to impose certain restrictions upon the Governor, if the Legislature thought he was acting unwisely or untruly. The old law has been there since 1830 — this long period, almost half a century — giving to the Governor the power to recommend the removal, and the Senate the power, on such recommendation, to remove if they see fit; and it has been used, as found advisable, from time to time.

The only peculiarity about this case is that the Senate have given the matter an open investigation, with the calling and examining of witnesses, and even that the counsel declares was unlawful, as he says you had no right to swear witnesses.

Then, too, it is said by the learned gentlemen that the holding over by appointees beyond the Governor's term is a modern thing. It may be modern to some ancient mind. I refer to the Revised Statutes, 1st volume, page 116.

"Every person duly appointed, except the chancellor, justices of the Supreme Court and circuit judges, who shall have duly entered upon the duties of his office, shall continue to discharge the duties thereof, although his term of office shall expire, until a successor in said office shall be duly qualified."

There is no stopping with the Governor's term in that statute. The Revised Statute of 1830 clears it out of the way. The administration of office is not for the convenience of the incumbent, nor for the dignity of the Governor, but for popular use—to have the duties performed properly; and hence the Legislature, on framing this statute, very wisely came to the conclusion that all officers, except certain that were specified, should hold over when their terms expired, and thus this man held over, and he is Superintendent of the Banking Department to-day under the act of 1830.

Now we come to a remarkable thing in the counsel's argument. I confess that I am not quite clear enough to restate it, but it was some thing of this kind, that because the old act says, "by the consent" (vol. 1, page 123, § 41), "all officers appointed by the Governor, with the consent of the Senate, except the chancellor and justices of the Supreme Court and the circuit judges, may be removed by the Senate on the recommendation of the Governor."

He says that, in the act creating this office, they have used another word, and that the office of superintendent is to be appointed by the Governor, by and with the advice and consent of the Senate. The metaphysics by which he makes out the slightest difference is very hazy. A nomination is made by the Governor; and what does the Senate do if they approve it? They simply confirm it. That is their "advice." If that is not the word you want, that is their "consent."

They consent to it and they advise it. The learned gentleman says this word "advice" carries along the idea that it is their reasonable advice in the nomination. Under the Constitution of the United States and in Washington's administration the question arose. It was claimed that the Senate might make nominations. It was examined into; and Washington and his cabinet determined that the Senate had no right to make nominations; and this has been acted upon as a perfectly wise conclusion. The nomination comes from the

President, and the advice and consent are given by the Senate, by confirmation in effect, saying we do advise to have this man in office. The chancellor was nominated under the old practice "by the advice and consent of the Senate." That was the former mode. The Comptroller was appointed in that way. Did the Governor have to wait until the Senate advised him before he nominated the man? The Governor would be nowhere in that case; the Governor would have no voice about it, and the Senate would have it all in its own hands. It was provided the Executive should make the nominations, and another body should give its advice and consent to them. Sometimes, in the statutes, the word is "advice," sometimes "consent," and sometimes they are both, and the meaning is the same every time. If the Senate confirmed the Governor's nomination, it was their "advice," it was their "consent," or it was both.

The learned gentleman struggled along in that for some time, and I felt reminded of the old saying of some one asking a Scotchman what is metaphysics? He said, "It is where one man tells a thing to another, and the man to whom it is told don't understand it, and he who tells it don't understand it himself." I must confess I am like the man that was told, who did not understand it, and it yet remains for me to learn whether my friend understood it.

But we will not trespass upon your time in regard to this, but turn to another part of the defense. The whole Government is arraigned here as prosecutor of an innocent, worthy, honorable public servant, who does not want the position. The whole world is arraigned. Senators have been arraigned. The present and past Governor and Legislature have been arraigned. It was even charged by the counsel who first argued on behalf of the respondent, in his summing up, that all persons, public and private, have neglected their duty, except the counsel for the prosecution. He acquitted us of that, stating that we performed our duty, but everybody else, in some manner or other, neglected theirs.

Now we are accused of deceiving the Senate by a brief because, that on a page or two of that brief, which was printed before Mr. Ellis came to the stand, we did not mention some things that we had never heard of, and no one ever heard of them, until he spoke of them here; accused of deceiving the Senate because we did not print them in the brief. It has been a pretty lively work, carrying on this case, and we have made as much progress as we could. We framed and printed the brief upon the basis of the committee testimony at first; and as fast as the testimony before the Senate came from the printers we continued the brief and went on printing it. The passages where we might have mentioned what Mr. Ellis swore to, were printed some time before Mr. Ellis appeared upon the stand. If Mr. Ellis' testi-

mony had been before us in full—which unfortunately has not yet come forward printed in full to this moment—we should have made an analysis of it, and put it in the brief as one of the proper elements to show the absurdity of his attempts to defend himself by his own testimony.

What were these things, what were these omissions as to which he complains? They were conversations with officials, presidents, secretaries and trustees, of these fraudulent institutions; he seeing them and making no records of the interviews in the Banking Department, leaving no trace behind in writing, and having no witness to corroborate him. He followed this kind of testimony, by showing that he did nothing except to let them alone, according to his general “let alone” policy. That is all I have to say in reference to this matter.

I think we did right. We did as well as we knew how, in framing a brief for the Senate’s guidance.

To return now to the subject of the mere inquiry, we are met by a bold imputation on the Executive. Governor Tilden, says the counsel, was satisfied with this man, and left him in office. The Senate know perfectly well that when Governor Tilden began his administration, he sent in some nominations to the Senate which were rejected; and when he thus ascertained that the Senate were not going to confirm his nominations, he acted like a gentleman and sent in no more. He treated you handsomely, and you treated him handsomely; and you need not be told this morning that there was no use of his putting up the names of candidates for nothing. I am not going to testify what Governor Tilden thought about this man; I am not a witness.

They say these charges were slumbering in the office of the Executive department for six months. Why, gentlemen, the first charges that came in against Mr. Ellis were filed in October, 1876, and what could Governor Tilden do with them I would like to know? All he could do by law was to lay them before the Senate. Where was the Senate? Adjourned *sine die*. Governor Tilden could do nothing in the matter. He could not remove him or do any thing about the complaint, and so it stopped right there. He would not be Governor when the next Senate appeared, and so he could do nothing. The next Executive, Governor Robinson, comes in January 1, 1877, and he finds here an office vacant by expiration of the term, and the incumbent holding over; and he also finds some accusations against this same man. If Governor Robinson had taken up those accusations, and sent them to the Senate and asked the Senate to remove the officer, the whole world would have cried out against him. It would have been said, “first, name somebody to put in his place.” That was what he was about to do. It was a matter of duty and not a matter of option with him. He owed it to the State o

New York, to select a candidate for the office. He did so, and the candidate's name was sent to the Senate. The Governor was not in haste to find a candidate, but, like any other worthy Governor, took his reasonable time to look around and think before determining his selection of the man.

Some of the gentlemen whom I have the honor to address now, will yet know what it is to be Governor, and then they will see what a grave duty it involves. A Governor is not to appoint a man to an office for three years hastily. On the seventh of March he sent in his nomination. Then, the Senate, with no indecent haste, but with proper care took up the question of confirming that nomination; and I think, about a couple of weeks after that they made up their mind and rejected it. That was about the twenty-first of March. On the part of the Governor, his conduct was exactly right, to make that nomination to fill the vacancy, and to take the time to do it with his own satisfaction; and, when his selection appeared to be unsatisfactory to the Senate, after having it in hand for a fortnight, then another question arose.

The Governor has before him these charges—whether he had examined them before or not. I do not know, but they had come to the department, and he may have seen them. The gentlemen says they were in a pigeon-hole. That is a very proper place to put them, because there was no present use for them, but when the new nomination failed there was no use for them. Gov. Robinson then draws them out and sends them to the Legislature, with a message recommending the removal of Ellis, about two or three days after his nomination was rejected. The Senate, with a promptitude which became such a subject, proceeded at once to act upon the matter. On the twenty-third of March some more charges were sent to the Governor, including the charge about the Third Avenue Savings Bank, and all the charges in which Mr. Mack is named as the complainant, relating to some nine institutions in all, and the Governor sent these in. Every thing has been done in the usual, proper and fair way.

It is painful to find in this, as in any case, an attempt to warp a simple inquiry by the prejudice of party politics. Cannot two differ about party matters without carrying that controversy into an issue on a charge of negligence? We may differ about various questions—about education—whether it is best for children to study this or that, and so about other matters, even including politics, and yet recognise each other's honesty, and feel sure that on a trial like this justice alone shall rule. The Senate once sat here, trying a great officer, who was a leading, prominent politician, Senators in conjunction with the judges holding a court of impeachment, and trying him for many days. When the trial was ended, you would not know what was the

party politics of these Senators by their decision. In earlier days, when we had the Court of Errors, and the Senate sat to review the decisions of all the courts of this State, sometimes with the chancellor and sometimes with judges of the Supreme Court to assist it, that Court of Errors was respected and accepted as a set of men who, undoubtedly, when they were chosen to the Senate, were active partisans, but whose public course was with an eye single to the public good, and who did not feel that they could use the senatorial power to make or mar a party; and when they came into the position of judges, the judge was found to rise above the man—the Senators showing judicial mind, judicial character and judicial habits, in reviewing, and sometimes correcting the judgments of inferior courts, to the great advantage of the law.

It would be a sad thing if we should see the force of party politics enter into this case in any possible form. If I came here to try the case on the basis of party politics, I should ask nothing but the blue book, where I could find the party of every one of you written down, and it would only be a question of arithmetic as to how many are on one side and how many on the other. If a Senator sitting here in a court, where witnesses are examined under oath, and where important public questions—State questions and moral questions—are considered, is not capable of being more than a politician, then this government is not worth saving. There are in this country many voters anxious about government affairs, actively working for the best possible good, and always casting their votes, who do not recognize any party ties or any party obligations; and this very considerable number of people, if they were here, would lift up their hands in horror at the idea that that partisanship is to be considered as an element in this present case. They, without preferences one way or the other, have learned to find honesty on both sides; and they love to think the country safe, without placing it on the low plane of party interests.

There is a great complaint here that this man has been subjected to two trials. It is like that fellow who, being indicted for stealing a horse, claimed that he ought not to be tried. "I have been tried once or twice before. They tried me before a justice of the peace, and he sent me to the grand jury; then the grand jury tried me, and now you are going to try me a third time." The Senate appoints a committee to inquire into the matter. They made certain inquiries, pending which approached the time when the Senate should adjourn. The committee reported merely the testimony they had taken, and the Senate saw it was a large subject, and would take time, and therefore arranged for this trial. Mr. Ellis did not and could not elect to be tried by the committee. Had that committee any power to deal with him, or determine any thing about him? Not at all. They were not sent

out for any such purpose. Where, in the Constitution and Revised Statutes, did my friend find that kind of trial for a case like this ?

All the way through there is a grave complaint that Mr. Ellis is called to account for mere negligence. We were met with the idea that there was nothing charged here but negligence, no smell of corruption, only neglect of duty. It is true that the complaints and message do not contain any charges of corruption, or taking of bribes and it will be recollected that, as the case proceeded, at an early stage, there was some evidence offered or given which the Senate thought tended towards making an accusation of bribery or of getting money wrongfully ; and the evidence was rejected. It is a thing we rejoice in that there is nothing of that kind here to increase the labors of counsel ; but the circumstance that nothing of that kind has been proved here does not make any thing against Mr. Ellis, or any thing for him, on the actual issue.

There is, however, I must say, one thing in the charges laid before the Governor that does smack a little, not of corruption, but of active wrong ; and that is that Mr. Ellis deceived the Legislature, or tried to deceive it by the language of one of his annual reports. Here is the passage referred to. He says in his report to the Legislature of 1876 —speaking of the Third Avenue Savings Bank :

“The examination of the bank made by the department in 1876 showed conclusively that the interests of the depositors required the bank to discontinue business ; and, on my recommendation, the Attorney-General commenced an action, and placed the institution in the hands of a receiver.”

That is the passage ; and the complaint is that he does not say the examination of the bank made by the department in March last — six months ago or nine months ago — showed conclusively that the interests of the depositors required the bank to discontinue business, but he says, “in 1875 ”—it might have been in December according to that. He did not tell when it was. He also says : “On my recommendation the Attorney-General commenced an action, and placed the institution in the hands of a receiver.” As it reads, it carries the idea that, right away, when the examination was made, he handed the bank over to the Attorney-General, which is far from the fact ; and he says “On my recommendation, the Attorney-General did so.” He did not say any thing about the recommendation of the people to him, and that is charged in the complaint as a piece of language used for the purpose of working a deception in the mind of the Legislature as to his official diligence and activity. I submit it without any further argument, deeming it about as clear a case of intending to deceive by suppressing the truth, as you can find in any writing or printing.

We will go back to the other charges. The charges are “neglect of

duty"—mere neglect. The Senate will allow me to state, that, in your resolution you say, was he guilty of "culpable negligence?" I find all the dictionaries give "culpable," as "that for which a man should be blamed," and there is no neglect which is not blameworthy in some degree, and culpable in some degree. There are a great many degrees of culpability and neglect, and some rise to the grade of being willful neglect. If a nurse charged with the care of a little child, goes along by the roadside, and occupies herself with looking at flowers and butterflies, and draws out a yellow-covered novel from her pocket and stops to read; and the child strays into the street, in peril of its life, she is guilty of neglect, and a discreet mother will give her notice that she can remain no longer. It might have been a very serious matter. Such neglect might have caused the child to be run over and killed. It is negligence; it is not doing a thing which should be done.

Now, suppose this same nurse while reading her novel, hears the child cry, and sees it sitting in a mud-puddle in the middle of the street, and saw a wagon coming that way, and she loves her novel more than the child, and goes on reading. That is "willful neglect." In the first case it is neglect *without* any willfulness, and in the second place it is neglect *with* a will.

Our laws in this State take hold of that distinction. There is no criminal punishment for official negligence, unless it is willful negligence by a man with his eyes open, and who meant to act as he did act—omitting intentionally to do a certain thing which he should have done.

When Hall was tried in New York for neglect of duty as one of the board to audit the great accounts of the city and county, there was no doubt at all that he had been negligent, but the jury seem to have concluded that he did not comprehend what he was doing, and therefore was not to be held guilty of willful neglect.

The statute in regard to willful neglect will be found at page 145 of the Revised Statutes, volume 2. You can only punish, then, for a *willful* neglect of duty. Suppose a sheriff or constable receives an execution in the morning, and attends to his garden and other things, and by and by, towards evening, goes over to look after the man, and the man has run away and driven off the horses upon which he might levy the execution. That was negligence, but mere negligence. But, if the officer knew the man was preparing to go away, and had a span of horses there, and it was easy to run away with them, then his negligence is willful, and the offense of the statute is complete.

You do not say "willful neglect" in your resolution; but was he guilty of gross negligence? Was he guilty of neglect for which he was culpable or should be blamed? There is no crime charged against



him under your resolution — nothing that a justice of the peace can take hold of — but simply the question “has he neglected his duty?” The real question before you is, “Shall this man be continued in his office or not?” But, before you decide that, you wish to know how he has performed the duties of his office. Has he done his official duty, or has he culpably neglected it and left it undone?

The British government found itself in just such a position as this. During our civil war cruisers were fitted out in British ports, under various disguises, and the *Alabama* was one of them, and when the case went to the Geneva Arbitration, the question for that high tribunal was whether the British government had been guilty of neglect of duty. There was not in the American case the slightest imputation of evil intention on the part of the British government. The idea that the British government deliberately meant to harm us was not thought of for a moment. The line of argument was that such parties fitted out and sailed such a vessel, and so did certain mischief, and that the British government had good opportunities to know what was going on, from information that came to it through Mr. Adams, and otherwise, and yet did not move fast enough in regard to it. It locked the stable-door after the horse was stolen. It was pure neglect without any will, without any crime, and for that they paid the money, the £3,000,000 sterling.

The things omitted in this world seem to some — have struck my learned friends on the other side — as not so serious as things done; but we read in that Holy Book here, upon which the witness is expected to put his lips before he can speak in this court, that, in that great, grand assize, when men are to be acquitted or condemned, the charge will be not that *this* man committed a burglary and that one a murder. The King will say: “I was hungry, and ye gave me no meat; I was thirsty, and ye gave me no drink; I was a stranger, and ye took me not in; naked, and ye clothed me not; sick, and in prison, and ye visited me not.” Then the ready self-apologists, in full chorus, will demand when they saw the King hungry, or thirsty, or in want, and did not minister to him. But the King will reply: “Inasmuch as ye did it not to one of the least of these, ye did it not to me.”

Look through this judgment scene, drawn by the Master who could speak as never man spake, and you will see that neglects of duty — the negative faults — strike the divine conscience as most noticeable and most culpable.

Mr. Ellis had a high office, with ample powers and obvious duties; yet his office was not that of a supreme arbiter, to watch over the general interests of commerce, with discretion, to sacrifice a few hundreds or thousands of depositors in the Third Avenue Savings

Bank for the good of Wall street and commerce generally. His office required him to watch over those savings banks and see that the depositors had justice done them, and not make one sacrifice for the benefit of the others. He had the means of inquiry; he had the means of running down to New York in five hours at any time; he had a man in New York for his examiner; he could have sent a dozen men; it was costing the State nothing; the institutions had to pay for it. It was in his power to find out, but he did not find out all; he found out too much for his good or for his credit. If he did not find out all he was guilty, and should be removed from his office. If you were to name a successor to him, I venture to say you would name a man who would not be caught napping about such things; you would put a man there who was all eyes and ears and hands to perform the functions charged on this office for the protection of these people.

His good intentions are talked about. I might quote from a minister of a former day about a certain region to be avoided, which he said was paved with good intentions. Good intentions do not give bread to the hungry and water to the thirsty. We want good deeds; and often a man is characterized badly by what he leaves undone.

My learned friend extolled the diligence of Mr. Ellis in his behavior when he first came into office. He said the first examination he made was of the Third Avenue Savings Bank. The new broom swept clean that time, and, if always afterward, it was nothing but a broomstick, we will give it the credit of being a good broom that day. It was high time he should examine that bank. He had before him the reports of the former year, from which he could see that, from a large surplus, it had dropped down to about \$12,000, and he knew, as every man knows that reads the newspapers, that there had been drawn out of it the previous year \$4,500,000 to pay depositors, and he must have known that constant dipping out at the top would pretty soon leave a poor residuum at the bottom. He had to do nothing but look at the annual reports to see: Real estate, over \$500,000; State bonds and securities of that sort, over \$500,000; bonds and mortgages, \$296,000. Three-fourths of these had become pretty dull assets, where imagination could figure upon the value; and it is a farce to value largely upon what would come out of them. He recognizes it in his testimony as one of the weakest banks. It had been strong, but it was weak.

You know, gentlemen, the process of getting \$4,500,000 together in forty-five days would be very likely to reduce the assets. If you have a bank that is good, and you draw that bank down half, its surplus should be just as great afterward as it was before. If the assets were

\$1,000,000, and its surplus \$200,000, and it pays off half a million, there will be left a surplus of \$200,000 on the remaining assets \$500,000. The surplus is not affected ; but if it had at first in its assets a lot of poor things, damaged property, and uncertain securities, they are not the ones on which the needed money would be raised. Some good things would probably be sacrificed in raising the \$4,500,000. It is very odd if they were not ; and the bank would doubtless borrow some money at high prices, supposing they could go through thereby. The trustees did go through ; and thus made up their report for January, as showing they had their heads just above water. Ellis appointed three men — I agree they were first-rate men—Reid, Aldrich and Vrooman, who knew what they were about ; and they went to the bottom of the concern, and showed him a beggarly account of empty boxes.

With this before his eyes, Mr. Ellis did nothing. He let it alone. The trustees went on as before. My learned friend says : What is a shortage of one-half of one per cent, on a savings bank ?” It is a horrible thing. He says foreign insurance companies, and others, are allowed to go on until they have lost twenty per cent of their capital. Yes, but suppose they had lost all their capital and more. That is the difference between them and a savings bank. The insurance company loses twenty per cent of its \$200,000 capital. It has \$160,000 left. A commercial house has \$20,000 in merchandise, and lose \$5,000. It is good yet. It has \$15,000 left. But suppose it has lost \$21,000 ? Then it is \$1,000 short, and not worth a farthing. It has \$15,000 and owes \$16,000. The merchant that would trust it after knowledge of that, ought to be sent to the idiot asylum. If a man represented himself as solvent, and obtained credit thereby, when he was not worth enough to pay his debts, you would send him to State prison — that is the place for him — for lying and false pretenses. A savings bank having no capital, when once it sinks below water, is gone. There is nothing to buoy it up.

Then we are told that no harm came out of this ; that, really, the depositors in savings banks are no longer the poor ; that they are the rich men who put in \$5,000 the Mallons and the like. There were only three bank deposit books produced to the committee, and one of them was the bank-book of Mrs. Gorman, a poor woman who showed that, at the time of that March examination, she had \$100 in this bank, and on the tenth day of September thereafter, she deposited \$100 more, for which deposits of \$200 she has got only fifteen per cent. The final report about that case shows there was \$1,400,000 owing to 7,000 people, and it was an average of \$200 to a depositor.

The idea of invoking sympathy for a man on his removal from office is very strange indeed, in view of the suffering he has caused these

poor creatures who have denied themselves pleasures and comforts to lay up a little something for a wet day. If this fate of deposits in savings banks is to be an example for the servant girls, they will spend their money on ribbons and feathers and candy ; and the young men will throw it away on wines and cigars, instead of laying it up in a savings institution.

I come now to deal with the three questions submitted by one of the learned body before me, the Senator from the Thirty-first.

“1. In continuing to pay its depositors subsequently to March, 1875, was the Third Avenue Savings Bank guilty of a fraud upon the United States bankrupt act, by making preferential payments within the meaning of the thirty-fifth and thirty-seventh sections of that act ; if so, does the reason urged by the respondent afford any justification for permitting such a fraud to be perpetrated ?”

I answer that the bankruptcy act makes it a fraud in any man who is insolvent to prefer one creditor over another. It is a piece of law that has struggled through the judicial mind a great while, but has not had its place in the statute law of the State. The bankrupt act has put forward that doctrine, that it was a fraud for an insolvent man to take a share of his property which belonged to one and give it to another, by paying to one more than his just share in a fair division. That is a fraud under the bankrupt act.

“2. Were the payments to depositors made by the Third Avenue Savings Bank subsequent to March, 1875, in violation of the provisions of section 9 of article 1 of title 2 of chapter 18 of part 1 of the Revised Statutes, which, in substance, forbids any payment by moneyed corporations when insolvent or in contemplation of insolvency, with intent of giving a preference to any particular creditors over other creditors ; if so, does the reason urged by the respondent afford any justification for permitting such violation of the statutes ?”

Here we come to the instance where we must apply the great doctrine “Equality is equity.” Moneyed corporations are forbidden to make preferences, if they are insolvent ; and it is a fraud in them to infringe upon it, and is a breach of that statute.

“3. Was the receipt of the deposits by the Third Avenue Savings Bank after March, 1875, without any notification to depositors of its insolvent condition, a fraud upon each depositor according to the law of this State, as laid down in the cases of *Nichols v. Pinnear* (18 N. Y. R. 295), *Hennequinn v. Naylor* (26 N. Y., 139), *Stewart v. Strasburger* (51 How., 388), *Brown v. Montgomery* (20 N. Y., 287), *Chaffee v. Flint* (21 Lans., 81). If so, does the reason urged by the respondent afford any justification for permitting the perpetration of such fraud upon the depositors in said bank ?”

The legal doctrine is stated in the cases cited by the Senator.

There is a later case still, which is not fully reported in the books, and of which I have a note here.

The failure of Duncan & Sherman, mentioned in the evidence on this trial, did not so much make so great a crash in New York as it has made its mark upon the legal history of the State. Shortly before their failure, one of their customers supposing them to be perfectly solvent, paid them money for a draft on London. The draft was not accepted and never was paid. He sued Duncan, Sherman & Co., for it and had Mr. Duncan arrested, Duncan went to the court to get rid of the arrest. In the Supreme Court it was held thus:

“Although a banker or trader in embarrassed circumstances who is struggling in good faith to retrieve his fortunes is not compelled to disclose the fact of his embarrassment to persons dealing with him; yet, if he is at the time hopelessly insolvent, he is guilty of a fraud, if, by virtue of his supposed solvency, and well-established credit, he contracts obligations which he cannot reasonably expect to pay. Persons dealing with the bankrupt in good faith and in reliance upon his apparent solvency will be protected against the consequences of the concealment by the banker of his real condition if he is at the time not merely insolvent but bankrupt and where such concealment involves a degree of bad faith from which the law would imply fraud although no actual representation has been made.”

The case went to the Court of Appeals; and the order was affirmed. The decision is not yet published, but a syllabus of it is contained in the Albany Law Journal, thus: “What circumstances authorize arrest for fraud. Broker selling exchange. D. & S. had for some time carried on an extensive business as bankers and brokers, dealing in exchange. They lived in princely style, had an elegant banking-house, with numerous clerks, and were reputed wealthy. Plaintiff, who had done business with them for several years and believed them to be perfectly solvent, on the twenty-first of July purchased in the ordinary way their sight-draft on the Union Bank of London which was presented at the Union Bank early in August and payment refused, and the draft was not paid. On the twenty-seventh of July D. & S. made a general assignment for the benefit of creditors when it appeared that they were indebted to the extent of \$5,000,000, mostly due, and had assets to the amount of less than \$2,000,000. The firm kept correct books and at and prior to the time of the sale of the draft to the plaintiff, the firm knew of their embarrassment and endeavored to obtain help from European parties. It did not appear how they became insolvent, or what reason they had to hope they could go on in their business.

Held, that D. & S. must be held to have intended what was the

inevitable consequence of their conduct, namely, to cheat and defraud all persons whose money they received, and whom they failed to pay, and the plaintiff was entitled to an order of arrest against them under the provisions of the Code, section 179, subdivision 4, that such order is allowable where the defendant shall have been guilty of fraud in contracting the debt or incurring the obligation for which the action is brought. (*Roebling v. Duncan et al.*, opinion by Earl, J.)

Second. Held, also, that the fact that at the time the draft was sold D. & S. were shown by their own books to have had a large amount of money to their credit in the Union Bank, no sufficient part of that money having been set apart for the payment of the draft, could not affect the case.

There was nothing said, but the defendants were known as a large banking-house. Their reputation was perfectly good, and they themselves, knowing they were bad, did not tell the customer. This principle has been discussed somewhat in the cases noticed by Senator Sprague. It fits exactly this case; that that Third Avenue Bank is guilty of fraud, and its officers liable to be arrested by every depositor defrauded in that way; and the question is, how that bears upon Mr. Ellis? Could he say "I did not know any thing about it?" Mr. Ellis knew before; he knew in March that the bank was insolvent; he knew it all the summer until the whole thing dropped like a dead carcass into his hands in the fall. It went on until there was \$96,000 put in by new depositors which they never drew out. There was a question in *Roebling v. Duncan* about the intent of Duncan affecting the question of his criminality, whether he could be arrested and sent to jail without proof of active fraudulent intent; all of which has nothing to do with the determination of the question of whether Mr. Ellis was vigilant, diligent or negligent. The case shows that the Third Avenue Bank was committing daily fraud, and our proofs convict Ellis of neglect to stop its operation.

Webster's Dictionary defines "neglect" to be "an omission to do;" and to illustrate, he uses this expression: "Neglect is usually the child of sloth or laziness, and the parent of disorders in business, often of poverty. It is the not doing."

Burrill defines it as "omission of care or want of care" or as "inattention, not attending to his duties;" in short, the not doing a thing, wilful or not wilful.

If a hired man does not do his work, does not rise in the morning and do the things that should be done around the barn, does not fasten up the gate as he should, he neglects his duty; he is not the man that you want, and he should be dispensed with.

Some complaint is made here that this respondent has been harshly

dealt with by us, that we have gone into his office and taken his papers and brought them all to the public eye of the Senate.

Mr. President and gentlemen of the Senate, we thought it was our duty when we represented the State of New York, to find the evidence which this man had in what he called his office; but it is the counting-room of the State of New York. If one of you gentlemen has a clerk, against whom there comes a complaint, do you not dare to go into your own counting-room, and look at the securities there? We thought the State of New York had a title to go into its office, and call its own clerks up and ask them questions, and we did it; and, if there was any wrong about it, it was our blunder, and a willful blunder, we did it deliberately. We thought the State of New York was entitled to know all about that, and therefore we had the papers brought here. The papers in this case against this man on the charge of "negligence" are mostly from his own office. We bring the record from right under his eye. We did not call him as a witness, for reasons that are very obvious. Not much weight is due to his testimony. We called all the officials in the office—Mr. Lamb, Mr. Smith, Mr. Werner—young Mr. Ellis, we did not call. He was a son of the superintendent, and it would have been an unmanly thing for us to bring him here. We subpoenaed the examiners, men of his choice, Aldrich, Reid and Vrooman, and we brought them here and let you see them; and we went around and found the receivers, who finally investigated all these banks, the officers of the government, and who are a most respectable body of men. Very few men have made a handsomer appearance, all showing they knew what they were doing, frankly telling every thing; and in some instances it was quite extraordinary to see the amount of ability they displayed, as in the case of Mr. Best, in pursuing the affairs of the German Savings Bank of Morrisania to the end. If there was ever any thing fair in the world it was this course of going right to the man's own official premises and letting the papers tell their own story. There we find the report of the Third Avenue Savings Bank being examined in March, 1873. Mr. Stewart said on the stand in New York, before the committee, that if he had had that report of the examination of 1873 before him at the time when Mr. Ellis called on him in the summer of 1875, he should have pronounced that the bank ought to have been closed up immediately; yet it goes on to 1874 and 1875 from bad to worse. It was going down hill and nothing could stop it. When the examiners reported in March, 1875, they showed a deficiency of \$219,000; and at the same time, recollect, these excellent examiners said they did not go on and reappraise the real estate at all, but took it at the old figures, although it had begun to fall in September, 1873. It was all run down; they did not look at that at all, because the bank

was beyond remedy ; they saw the deficiency was so large that it was not worth while to look into the value of the real estate and both of them swear to it. No doubt, if they had made a canvass of the value of that real estate at the time, and had valued the \$115,000 of trustee bonds at what they were worth — five or ten cents on the dollar — you would have seen the bank had a deficit of nearly \$500,000, instead of \$219,000.

It has not been destroyed by the receivership. It has been well-managed. The court had these bonds appraised, and they sold as near as they could to the appraisal price, but there were the old charges and liens upon them, so that the valuation is not the whole story, but the amount of taxes and assessments must be found and deducted before there are any net proceeds for the receiver. There was some difference in the testimony as to the value of that banking-house, but the experts of New York examined before the committee, say it was never worth over \$140,000. Mr. Reid testifies that in October, 1874, Mr. Ellis and Reid went there to look into these concerns of this bank, and found it largely deficient, but no return of such examination was filed, and no further examination was made till March, 1875. The bank went on until the trustees caused it to be closed. When they asked Ellis to close it, he complied. These trustees met in New York at half-past seven in the evening, and resolved to send a committee to Albany to have the bank put into the hands of a receiver by the superintendent, and the next morning, at ten o'clock, the thing was all over, and Mr. Carman, who went up the secretary, was ready to return as receiver.

There has been some complaint made of receiverships, generally, and the passage was quoted: "If it was no better for the concern to go on than to be delivered to the tender mercies of a ring receivership." We understand what a ring receivership was. It was a receivership to pluck the funds and not to take care of them. Mr. Carman was a pretty good example of a ring receiver. He was turned out afterward, as being unworthy of his place, by a judge of the Supreme Court, upon a clear and well-settled principle of law, and a new and proper receiver put in his place.

All these pending receiverships have been managed with care to give the depositors their money. It is not the tendency of a receivership to work the destruction of property, unless it is a ring receivership. The appointment is for the purpose of taking care of the property and obtaining the best price. Two savings banks had receivers appointed on the application of depositors, without going near the superintendent, and in two other institutions, the Loaners' Bank and the Loan Company, receivers were applied for by their stockholders and creditors.



The notion that a receivership is not a good thing has no valid foundation.

All these gentlemen so appointed were men of respectability and consideration. They went on carefully and did the best they could with their subject. What depositor in one of these savings banks, what depositor to-day, waiting to see what may come out of the ruins through the receivership, would be willing to put it back into the hands of the trustees to have them manage it?

Senator HAMMOND — I move that the Senate do now take a recess till 4 P. M.

The President submitted the question on the motion of Senator Hammond, and it was decided in the affirmative.

The Senate-thereupon took a recess to 4 P. M.

SARATOGA SPRINGS, *August 17, 1877* — 4 P. M.

The Senate reconvened. A quorum present.

Continuation of the closing argument on behalf of the State.

Mr. C. TRACY continued as follows:

Mr. President, in the course of the trial, a studied attempt was made to prejudice the court against Mr. Smith as a witness. Mr. Smith was criticised by the counsel for doing a thing which any honest and true man always will do. One day near the close of the morning session, he was examined, and many questions were put to him. When the Senate took its recess, he went to the stenographer and said: "I am apprehensive that I have expressed myself wrongly about something there, and I would like to see how it is." He went over the testimony with the stenographer, and what the result was I never knew until he came at the opening of the afternoon and said he desired to correct his testimony. He came to the stand and by leave of the Senate gave his testimony as he meant to have it, for he had incautiously expressed it wrong before. It was the act of a man tenacious of truth and scrupulous of having any thing erroneous stand on his authority, although the error was unintentional. This is in his favor; many a man may say, "I meant it right, and I do not care how the stenographer has it down, that is none of my business." But it was otherwise with Mr. Smith.

There is an attempt to contradict him as to a tabulation of the bank report of July 1, 1873, made by the Third Avenue Savings Bank. Mr. Ellis attempts to contradict him. We will see how he does it.

Before the Senate Smith swore that he took up that report, scrutinized it and made tables about it, and gave the tables to Mr. Ellis,

produced a copy which occupied two or three pages of the record, a careful analysis and criticism of the report. On the seventy-seventh page of the Senate testimony that fact is stated. On page 78 he says that he not only did so, but also, that he conversed with Mr. Ellis about the tabulation after it was given to him, and showed its bearing upon the condition of the bank. At pages 103 to 108 the tabulation will be found.

Then again, he swears that it was his regular business to do such a thing, that he was an accountant—had been ten years in the office. He was sometimes called “chief clerk,” sometimes “head clerk,” and Mr. Ellis had sworn before, that the practice was, when a report from a bank came in, to give it to that chief clerk to examine, and if there was any thing about it which required the special attention of the superintendent, to lay it before him. Mr. Ellis swears to that duty at page 538, and it is sworn to by Mr. Smith here. The reports go first to the head clerk. “He reports to me if he finds any thing wrong, and it has been the head clerk’s business for years.” It is a thing likely to be done; it ought to be done; and in this case, the matter was complicated and the scrutiny of tabulation was necessary, because there was a deficit of assets only three or four months before that report, and now the report indicates a surplus and it came in very late, and it naturally called for this examination.

Mr. Ellis asked the Senate to disbelieve that Smith did that thing then or made it known to him at all. It was Mr. Ellis’ business to have him do it, and if it so happened that Mr. Smith neglected his business and did not report to Mr. Ellis, it was Mr. Ellis’ duty to ask him about it, and say: “How about that report?” and to scrutinize it. Mr. Ellis, therefore, in all probability, knew about it; for he cannot ask you to presume that he had neglected that duty, also neglected to call upon his clerk for the result of a scrutiny which he was bound to make. What does Mr. Ellis say about it? At page 875 of the Senate testimony you will see. Perhaps the gentlemen will remember that Mr. Ellis began by denying, and ended by not remembering about it. It is as follows:

“Examined by Mr. McGUIRE:

Q. Mr. Ellis, you are the Bank Superintendent, are you? A. I am.

Q. I will call your attention to some statements that have been made in regard to the Third Avenue Bank—not to go over your former testimony—these papers which Mr. Smith presented here, claimed to have been made by him in 1873—you may state whether you ever saw those papers? A. The first I ever saw or heard of them was upon this trial here in Saratoga.

Senator SCHOONMAKER — What papers are those, Mr. McGuire?

Mr. MCGUIRE — Papers which Smith produced? private memoranda that Smith produced here.

Q. Did you have any conversation with Mr. Smith in respect to this bank in September, 1873? A. I don't now recall any special conversation in regard to the bank; I think the bank was referred to in 1873, when that special examination was made, or when the examination was made by Mr. Reid, and a general history of it talked over in my office; I don't recall any distinct conversation with Mr. Smith about it any more than anybody else."

This respondent, as a witness, was examined at considerable length by Senator Gerard. The printed testimony of the examination has not yet been returned here, but I have a fresh recollection what it was, and Senators have also. Upon being questioned, he would not stand upon a denial that he never saw the papers, but a denial that he had any recollection of them. Mr. Lamb was asked about it, and Mr. Lamb swore that Mr. Smith did say that he had done such a work, and that he had made such a document.

There we have contemporaneous evidence of the truth of what occurred.

Does Mr. Ellis' counsel desire the Senate to disbelieve Smith, whom he has kept in the department all this time? Is that the style of man Mr. Ellis chooses for his chief clerk? Such is the position the respondent absurdly puts himself in.

It was an outrage to attempt this discrediting of Smith. You saw the man here. He has had the confidence of all the superintendents since the department has been instituted, and is there now, and on him Mr. Ellis is relying for duties there to-day.

The respondent's counsel claims that great efficiency of Mr. Ellis appears by his report of closing up so many banks. You have had before you ten institutions — eight savings banks and two other institutions, and how many of them did Mr. Ellis close up? Let us make a little collation of them. He says there was only one bank closed during that time, except by his direct action, namely, the *German Savings Bank of Morrisania*; but the very next one closed was the *Trades Savings Bank*, which was closed by Mr. Lamb when Mr. Ellis was off on his vacation; and then come the *People's Bank* and the *Mechanics' and Traders' Bank*. Those were actually closed by Mr. Ellis, under the legal form, but the *Abingdon Square Savings Bank* was not — that was closed by Mr. Lamb when Mr. Ellis was gone on his vacation — and the *German Savings Bank* was closed up in pursuance of a resolution of the board of trustees, who had suspended the institution, and asked him to have it done; and the *Security Bank* was closed by the depositors, who could not wait for the slow coach,

but brought a suit and had a receiver appointed; and the *Mutual Benefit Savings Bank* was closed in the same way.

It is strange that while there is a superintendent in office, with plenary power to put a bank in the charge of a receiver, nothing should be done with an insolvent institution until the trustees or creditors, or depositors, apply to the court, and thus take the remedy into their own hands. Two banks were closed by Mr. Ellis on his own motion; two banks were closed by Mr. Lamb; two were closed through the department on the application of the trustees, and two were closed by the depositors without the superintendent's action thus making the whole eight savings banks.

My learned opponents say that Mr. Ellis took a vacation for two or three weeks. I wish he had made vacations of a good many months. In two cases before the Senate, the thing was suffering to be done, and the paper was before him, and he goes off on his vacation; and his deputy, then having the power by law, proceeds to do it. Blessed be his vacations!

He stayed there all these years at the rate of eleven months a year, and acted plenary on two occasions, just as many as Lamb did, by his proper authority, as the deputy, in the little vacation time when Mr. Ellis was gone.

Mr. Ellis says he approved of what Mr. Lamb did. It is indifferent whether he approved of it or not. When he was out of the office, or out of town, Mr. Lamb was just as supremely the superintendent as Mr. Ellis; and Mr. Lamb says he did not ask leave or have any directions at all. His duties were imposed upon him by law, and he exercised them every time; and there is no kind of criticism to be passed upon his behavior.

It is a little curious to see what grounds were stated at the time for putting these banks into the hands of the Attorney-General. In three of the cases, it was the ground of deficit of assets and insolvency, figuring out how much the assets and liabilities were, and declaring it insolvent; and, in another one, nothing was said about insolvency.

It is the clear intention of the law that these depositors need not be taking care of themselves and watching over the savings bank which they cannot penetrate. The law has provided a man who can go with his eyes open right into the vault of one of these banks and through all its papers, and, by experts like Reid and Aldrich, find out all about it, as the depositors cannot. The State creates this office to make depositors secure.

There was one attempt to put this Third Avenue Savings Bank into the hands of a receiver by a depositor. But he had not been sharp enough to demand his money first, and therefore the suit was

defective. In the next place, he had not the means which the superintendent had to show the concern insolvent, and so, on the motion, he was sworn down by affidavit, and the case fell through ; but Judge Barrett's opinion shows clearly that if insolvency had appeared, he would have put it into the hands of a receiver immediately. If insolvent, in any degree, according to his doctrine, he would have thrown it into the hands of a receiver.

The Senate will bear with me a moment to consider an objection suggested by the other side ; the claim that you have no jurisdiction to remove this superintendent on the ground that the act of 1867 repeals by implication the Revised Statutes, so far as they apply to a Bank Superintendent's removal. The learned gentleman did not stop for a moment to remind you that, when there is a statute giving one remedy, or mode of proceeding in a given case, to accomplish an end, you may pass another statute that giving another remedy or mode of proceeding to accomplish that same end, and both of them may exist together. He did not remind the Senate that the repeal of a former statute by a subsequent one, is never inferred unless it is expressed, or the two are repugnant and cannot stand together. There is a statute against forcible entry of premises, by which one can have a proceeding of a very peculiar sort ; and there is a statute giving an action for double damages in a suit for the like grievance ; and there is a statute authorizing an indictment for misdemeanor in such a case ; and there is still an action of ejectment for such a wrong. Was it ever imagined that those things were inconsistent ? These two powers of removal might have been given in the same statute. The Legislature might have said, an officer appointed by the Governor, by and with the advice and consent of the Senate, may be removed by the Senate on the recommendation of the Governor, or may be removed by the joint ballot of the two houses of the Legislature. They are perfectly consistent and stand together without jarring.

The old statute was as follows : "All officers appointed by the Governor, with the consent of the Senate, except chancellors, etc., may be removed by the Senate on the recommendation of the Governor." That is the general law as contained in the Revised Statutes. The act of 1849 provides for filling certain vacancies, and then, in order to make clean work, and show how they were to fill them, it goes on with a proviso, that any person appointed by the Governor, except State Prison Inspector, may be removed from such office by concurrent resolution of both houses of the Legislature. This is limited to persons appointed by the Governor alone. The Legislature, a few days afterward, in the same session (chapter 29), went on to make a slight amendment to some parts of it, and then repeated the same thing—any person appointed by the Governor may be removed from such office by concurrent resolution of both houses of the Legislature.

In neither case was there any thing about the "consent" of the Senate; simply the Governor's appointment; and he can remove in this way, or the officer can be removed by joint ballot of both houses.

Now come to the other and later act. "Any person appointed by the Governor, by and with the advice and consent of the Senate," whether in the case of vacancy or otherwise—except in the case of State Prison Inspectors—may be removed by concurrent resolution of both houses of the Legislature.

It is nothing extraordinary that two distinct powers of removal should exist. If there is a door on the north side of a house, that does not prove there is none on the south. Cannot you have two ways to go in and two or more ways to go out? The two statutory provisions are perfectly consistent.

It is thus laid down in the Supreme Court: "The invariable rule of construction in respect of repealing statutes by implication is, that the earliest act remains in force, unless the two are manifestly inconsistent with, and repugnant to, each other, or, unless in the last act, intention to repeal it is shown, as laws are presumed to be passed with deliberation and with full knowledge of all existing ones on the same subject. It is but reasonable to conclude that the legislature, in passing a statute, did not intend to interfere with or abrogate any law relating to the same subject, unless the repugnancy between the law was irreconcilable."

The Court of Appeals sanctioned the same thing in 56 New York, 616.

"Repeal of a statute by implication is not favored, and it is only allowed when the inconsistency and repugnancy of the two are plain and unavoidable. A statute will not be deemed to have been repealed by a later statute, if the two are not clearly repugnant, unless the intent to repeal is clearly indicated."

Now, we ask your attention to another subject: the *Trade's Savings Bank*. A brief synopsis of it will bring it all to your mind. I refer to the letter of Mr. Reid to Mr. Ellis, of February 5, 1874, informing him of the discord and controversy between the trustees, and of a policeman being in charge of the bank, and of the secretary being removed; and also informing him that there were charges against the president, of using the funds for his private advantage, and that he had proposed to Mr. Freese, the secretary, to divide the funds between them; and also informing him that the assets amounted to about \$44,000, including the safe and furniture, and that the liabilities were \$47,000, and suggesting the appointment of a receiver; and also stating that false reports had been made to the department by this same Mr. Freese. The next day, which was the sixth of February, Mr. Ellis writes to the Attorney-General, recommending proceed-

ings on the ground that it was unsafe and inexpedient to let the bank go on ; but not mentioning its insolvency. It is very extraordinary that he did not mention the deficiency which he had before him, on this occasion. Mr. Ellis swears, that after the proceedings were instituted, he went to New York and saw Mr. Freese at his hotel — he did not go down to the bank — and there with Mr. Freese he learned that the trustees had been accused of being thieves and robbers, and he found the president was using the bank in his own interest, acting without knowledge of the trustees ; and he told him, “ now you must take your choice of being wound up immediately, or else the president or finance committee or trustees must resign and the bank be allowed to run a short time longer.” Mr. Ellis says there were some resignations made, and he did let it go along, not a little longer, but right along without any interference. Mr. Freese was left in office with Mr. Ellis’ consent ; the same man mentioned in that letter of the 5th of February, as the great offender in all these iniquities. Nothing in the department has been found on the subject of the scrutiny of this bank. In the report of January, 1875, it comes in with a surplus of \$1,900 ; but when you scrutinize the report you find on the face of it they had put in furniture and fixtures and safe at over \$7,000, the very things Reid put down to \$4,000 as being all they were worth. At the end of two years’ time in November, 1875, Reid went there and examined the bank, and then he reported just what anybody would expect to find, a deficiency of assets and also a deficiency of income. This bank was paying its dividends all along. It gets down to this point. This is in November. The first time Ellis turns over and acts is on Christmas day, when he sends his compliments to these trustees, telling them to be on hand with their New Year’s report, and get it fixed up in the meantime.

“ ALBANY, *December 25, 1875.*

“ ALEXANDER M. LESLIE, *President Trades’ Savings Bank, New York City :*

DEAR SIR.—The report of the examination of your bank shows that there is a deficiency of assets with which to meet its liabilities.

The settled policy of the department is to close up all such banks unless the deficiency is made good, at once.

Your immediate attention is called to the matter with the hope that you will be able to put your institution on a sound footing before the first of January.

D. C. ELLIS,  
*Superintendent.”*

I next refer to the telegram which will be found on page 286 of the committee testimony, which was as follows :

“NEW YORK, *December 31.*

“D. C. ELLIS, *Superintendent :*

“Telegram received. Every thing fixed up as proposed.”

The superintendent thought best to jog these worthy men to have this thing fixed up, and he sent off some dispatch, of which we have no copy, and this dispatch was received in reply. They had the thing “fixed up.” They put a patch on to cover the rags and rents — a mere appearance of soundness. You observe the fatality of the thing. In January they must make a report. They must return it within so many days of the first of January, but it must relate to the first of January. It came in by and by, and the report shows for itself. It was so drawn up as to exhibit a surplus of assets of about \$1,400 at the flush prices, but if you put the assets down to actual value, it was \$458 and some cents. In figuring up the possible surplus of \$1,400, the assets were valued in one way, but it would be \$458 if they were valued the other way, and they also had to include the furniture and safe and second-hand articles at \$7,796.49, double what Reid had put them down at, lacking three dollars. All this Mr. Ellis well knew. Mr. Ellis’ mind was at peace on that subject, but Reid was apprehensive, and he wrote them three letters, one dated January fourth, another the thirteenth, and another the nineteenth, 1876, and it is but justice to the case those should be read.

I will read the letter of January fourth, which is as follows:

“NEW YORK, *Jan. 4, 1876.*

HON. D. C. ELLIS:

DEAR SIR. — This morning I received the *Excelsior* — found that the Dist. of Col. bonds had been sold and that the trustees had put in cash enough to wipe out every thing doubtful, and to give them a surplus of \$4,936 — and all the assets first class. The deficiency of income is about \$1,350, but De Witt says the trustees will pay all expenses. The deposits have been drawn down \$95,000 since Nov. seventeen, being now only \$360,000, including January interest. I then went to the Trades; Freese said *he* had paid in \$7,000 cash, and every thing was all right. I asked to see the entries; he said they had not been made yet, but would be in a few days, as soon as they could write up the books. I then asked to see what made up the \$10,000 cash in the daily statement; *he refused*, giving the same reason, that the books were not yet ‘written up.’ He also refused to show me the minutes of the trustees’ meeting, but admitted that they had adjourned the last meeting without recording the names or voting a dividend. He wished



me *not* to write you how I found things, but to wait a few days, and then make an examination, to test the accuracy of his annual report. I do not believe that the money has been or can be paid in, and I told him so. Leslie was not in. The deposits appear in the statement to be drawn down to \$12,000.

Secretary Smith of the Clinton says the trustees have paid in the cash for the \$4,700 trustees' notes, so that they will not appear in their report. The deposits have been drawn down to \$146,000.

The Bowery opened 400 new accounts on Saturday and 250 yesterday, making over 1,000 in ten days, refusing all large amounts; no one being allowed to deposit more than \$500. I have inquiries from two or three safe deposit companies for blanks for the January report, and also when they are to be examined, etc. Do you intend to send them any blanks for this month? Have heard nothing from the German of Morrisania, except from your letter.

To-morrow (Wednesday) I expect to go to Dobb's Ferry, to examine the Greenburgh Savings Bank.

Yours truly,  
GEORGE W. REID."

The letter of January thirteenth is as follows:

"NEW YORK, *January 13, 1876.*

Hon. D. C. ELLIS:

DEAR SIR. — Inclosed I hand you statement of assets, etc., of Trades' Savings Bank re-examined this morning; I found a pencil memorandum of meeting of trustees *January first, seven* present with resolution authorizing payment of six per cent dividend, also confirming sale of Beach street house for \$28,500, one-fourth cash, and the balance bond and mortgage. When I was at the bank *January fourth*, Freese said 'they had *not* had a meeting for want of a quorum, but would soon have one,' he now says he was excited and hardly knew what he was saying. The entries in the cash book for thirty-first December are evidently made very recently 'after they had time to write them up' as Freese said.

The bond for the balance of the Beach street house, \$21,375, is signed by John Mulvany for five years from December fifteenth, the mortgage said to be at clerk's office for record. Leslie was not in, but Freese says every thing has been done in good faith; perhaps so, but the entries in the books are not clear enough to convince me. Leslie is not to receive any rent for the banking room.

If the bonds and mortgages are good for the amount, there will be a small surplus counting the safe and fixtures at \$2,000, with an excess of income, \$643.

Yours truly,  
GEO. W. REID."

The letter of January nineteenth is as follows :

“NEW YORK, *January 19, 1876.*

Hon. D. C. ELLIS:

DEAR SIR. — Yesterday I went up to the Trades, but Leslie and Freese were both out. In looking over the books I could find nothing to show that the trustees have put in a dollar toward the deficiency, which has been almost entirely made up from the enhanced price put upon the Beach street property. Since my examination November twelve, \$3,130 has been charged as paid in it, and the account stood at \$16,483.29, when the account was closed December thirty-one. There is no entry in cash-book of \$7,125, which, with the \$21,375 B. and M., was to make up the price for which the house was said to be sold. I am not surprised at discovering these facts, as I believed at the time that the sale was a *sham*, and that Freese's statement that the deficiency had been paid by the trustees, about meetings of the trustees, etc., etc., all false. There are payments of interest on bond and mortgage entered in cash, December thirty-one, that may have been paid by Lesley, for I think the loans were made for his benefit.

Assets as per examination January thirteen.....	\$102,872 92
Deduct B. and M.....	21,375 00
	<hr/>
	\$81,477 92
Add Beach street house.....	16,483 29
	<hr/>
	\$97,981 21
Leaving deficiency of.....	2,459 37
	<hr/>
Liabilities.....	\$100,440 58
	<hr/>

The Mechanics and Traders' have taken notices from depositors for about \$150,000, the time expiring early in February. Fisher says they have over \$200,000 in cash ready for them, but he is very anxious as to the result. Conklin says he thinks very little will be drawn. These reports will be in 'shape' early next week, and they wish me to call and see it before completed. I will send reports in trust companies and four or five savings banks in a few days, and the balance (about a dozen) early in February. I suppose you saw the statement in the Tribune of this day, in relation to Schuyler's confirmation, and as to *republicans holding over*.

Yours truly,

GEO. W. REID."

Mr. Ellis comes here with a poor explanation of that matter. He says he met Reid after January 19, 1876, at New York, and sent him up to the bank to find out about the Mulvaney mortgage, and Reid came back and said he thought the matter was all right; that they had made the sale, and the mortgage was left for record, or that, in substance. You observe now what this amounts to. It does not cover the case. The bank, with a deficit, and all sorts of rascality going on, yet there is simply an effort to find out about the Mulvaney mortgage. We reject this explanation. It is not the truth. It would be no excuse if it was true, because it does not touch the fraud. It cannot be true, because Reid wrote a careful letter in regard to it, which is as follows:

“NEW YORK, *August 2, 1876*

MY DEAR LAMB.—On my arrival from the ‘Centennial’ this morning I found yours of the twenty-ninth July, and went up to the Trades. Freese seemed rather disposed to put me off, saying that the books were not posted, etc., etc. On telling him that you had requested, he wanted to see what you had written; and in reading it I skipped over your remark about the advertisements, and ‘I think to fail;’ but he was looking over my shoulder and it caught his eye. He quite objects to your remark, and says you have no cause for saying he would ‘cheat the depositors,’ etc. I told him it was a very natural conclusion, knowing as you did, about the sale of Beach street property for the supposed bogus mortgage. He rather stands upon his dignity, and said he would require the ‘commission,’ but finally concluded he would come down and see me in the morning with Mr. Lesley, the president. Every thing appears about as it was at the July report. The Long Island City \$7,000 bonds have been sold at ninety-five, which would reduce the surplus \$350. Freese says the interest has been paid on \$21,375 B. and M., *but it is not in the cash-book.* His account and the president’s do not agree upon some points as to the conduct of the bank, and they are to see me about those differences to-morrow. I hope to get off for Oswego on Monday.

Truly yours,

GEO. W. REID.”

Mr. Reid also wrote to Mr. Lamb on the 29th of August, 1876, as follows:

“NEW YORK, *August 29, 1876.*

MY DEAR LAMB. — Yours of the twenty-seventh and twenty-eighth just received, also commission.

The bogus minutes of the trustees’ meeting, no date, authorized John Mulvaney to return the deed to Beach street property or rather

to receive, in place of it, two bonds and mortgages amounting to \$15,000, and cash \$10,000, Mulvaney's bond and mortgage for \$21,350 to be returned to him, an apparent gain to the bank of \$3,650, but there is no entry of the \$10,000 in cash. The deed to, Mulvaney I understand was not recorded until July twentieth, the same day the money was borrowed from Samuel L. Willis, through W. M. Powell, attorney, 29 Wall street. These mortgages, \$7,500 and \$2,500, are dated and recorded July twentieth, due in three years. Deed from Mulvaney to Livingston June thirteenth, recorded July thirteenth; deed from Livingston to Leslie June twenty-sixth, recorded July thirteenth; two bonds and mortgages \$15,000, Lesley to Livingston, July twentieth, recorded August twenty-fourth, assigned by Livingston to Trades' Savings Bank the same day. Your transaction is illegal, as nothing is said in the record about the first mortgage to Willis, and the bank is not allowed to take second mortgages. I find, on inquiry at the Grocers' Bank, that Mr. Freese has made many transactions on the bank's account that do not appear on the books of the savings bank, and that borrowed mortgages and other securities have been used as collateral without any resolution of the board; in fact just as he saw fit. It may have been for the benefit of the bank, but the whole management has been irregular, and nothing can be learned from the books, and they have been made out to suit occasions, as they were required from time to time, as you will see from my letters of last January. Mr. Cothren says Leslie told him that his friends would furnish means, with securities enough to pay all depositors, so as to stop proceedings, and the trustees were to meet last evening, but, up to this time (3 P. M.), nothing has been heard from him or Freese.

GEORGE W. REID."

Therefore Mr. Reid never could have said the thing Mr. Ellis pretends. Reid is a man in his confidence. It was perfectly easy for Mr. Ellis to bring Reid here, as he did Lamb, and one or two other gentlemen, and ask him on the stand, and try by his testimony to obtain some confirmation. But he did not risk any thing of that kind. He did not desire any experiment at confirmation such as he had upon the call of those four New York bankers, who all testified contrary to his own testimony. When this bank finally was closed up, there was no voucher or evidence in the department, that Mr. Ellis ever scrutinized the bank. "Fixed up as proposed." There was nothing to verify that, Mr. Ellis let it remain several months, and then he went off on his vacation on the twenty-seventh of July, and, when he was out of town on the twenty-ninth of July, Mr. Lamb commenced operations and had it in the receiver's hands, before Mr. Ellis had returned from

the vacation ; and the concern failed owing to depositors \$76,000, having assets not worth \$9,000. I will not comment further upon it, but those are the facts in this case.

I will call your attention briefly to the "Abingdon Square Savings Bank." The printed brief gives you pretty much all the guidance necessary. You will see at the top of the brief as to this bank, that there was a report by Reid and Aldrich, examiners, December 1, 1873, showing deficiency of assets of \$1,567.23 ; deficiency of income of \$1,-802.70 ; safe and fixtures, included in assets, \$4,240.

It was in a most peculiar condition. It passed along to January and the trustees reported a surplus ; then in July again, a surplus in another report ; and when January came again, a surplus in another report, and yet the surplus this last time is not so great as the fixture account ; but right straight along goes the bank and is not meddled with, not scrutinized in any such manner as to get at the facts, until the regular examination which the law imposed upon Ellis, to have once in two years. The time for that regular examination, came around in November, 1875. Then the examiners find an apparent surplus of assets and a deficiency of income. They make a statement showing that trustees' notes of \$10,000 were included in the assets to make up that surplus, leaving a deficiency except for them.

Then comes the report of January 1, 1876. There was a letter written at that time by Reid to Ellis, which says :

"The trustees have given their individual notes to the president to the amount of \$10,000, additional security to protect the depositors against any loss."

These, then, were notes made by the trustees and payable to the president. If they had a very hard president, perhaps he would sue them, and then he would have been turned out the next day for it.

In July, 1876, Reid ventilated the concern by letter and showed a large deficiency. That letter was sent to Mr. Ellis at Rochester, when he was out of town. He returns in two or three days, and takes the letter and lodges it on Mr. Lamb's table, without an instruction or remark. Then Reid writes a letter to Mr. Ellis on the nineteenth of July, showing the deficiency increased, and calls the \$10,000 a bogus check, and the \$23,500 a fraudulent check ; and Mr. Ellis lays that on Mr. Lamb's table without a remark, and does nothing.

And now one of those happy circumstances arise. Mr. Ellis went on his vacation again. He went off to Vermont or New Hampshire ; and Mr. Lamb, being charged with the duty, went promptly about it, and this bank was brought up at once.

I refer, Senators, to a letter from Reid to Mr. Ellis of the date of July nineteenth, which will be found on page 578. Mr. Ellis

quietly drops this letter on Mr. Lamb's desk. Mr. Lamb takes care of the letter ; and when he has authority, in Mr. Ellis' absence, he acts upon the subject. Throughout the whole career of this insolvent institution, Mr. Ellis did absolutely nothing to restrain or close it.

The receiver finds the liabilities of the bank \$404,000, of which \$87,900 was due depositors ; and from the assets thus far he has made a dividend of fifteen per cent, and may, perhaps, pay a little more. There is no explanation of this. Mr. Ellis has never explained it anywhere.

Now, take a glance at the Mechanics and Traders' Savings Bank, and you will see a curious thing in looking down the table of successive events. The trustees constantly report the bank good, and the examiners always find it bad. Every time the truth was struck by a proper search the bank was found to be bad. The trustees' reports all the time were lies, and Mr. Ellis had evidence of it in the department.

Reid, Aldrich and Vrooman, in April, 1874, found a moderate surplus of assets, but a deficiency of income of \$14,770.90, which rendered it unlawful, wrong and criminal, for them to make a dividend, taking the principal and paying it back to the men and calling it "interest."

In July, 1874, the trustees reported a surplus of \$182,000 ; but scrutinizing it, we find in Schedule G, there was \$41,000 suspense account.

As I understand from the summing up of the counsel for the respondent, the depositors are to realize about thirty per cent of that.

Then comes a complaint drawn up by some of the persons interested, very respectable gentlemen, Mr. Gregory and Mr. Floyd, showing the condition of the bank. They took this to Ellis, and tried to make him move. Mr. Ellis admits that in those days there was a deficiency of \$25,000 to \$50,000 ; he admitted so before the committee. Mr. Ellis' letter under his own name will be found at pages 38 and 39 of the committee testimony.

#### "STATE OF NEW YORK :

BANK DEPARTMENT, }  
ALBANY, October 19, 1874. }

A. T. CONKLIN, *Pres.* :

By the recent special examination made by Mr. Reid and myself of the condition of the Mechanics and Traders' Savings Bank, it appears that the bank, instead of having a surplus, as heretofore reported, is deficient to the amount of \$24,981.90. The assets of the bank consist largely of southern stocks, which are very much depreciated, and the market for which is so unstable and fluctuating that it is a matter of

opinion and judgment what the exact deficiency is. It would undoubtedly, in the judgment of some, exceed the amount named, and in fixing the valuation of some of the securities where there is no determined valuation by sales in the market, it would, perhaps, be as fair and equitable to name a price which would increase the deficiency to \$50,000, instead of the sum reported to me.

It certainly is desirable for the bank to rid itself of this class of securities as fast as possible, with due regard to the ultimate interests of depositors, and substitute for them securities more permanent and certain.

I regret to find a lack of harmony in the board of trustees, which tends to cripple the success of the bank. Co-operation on the part of the managers can only insure the growth and prosperity of the institution.

In view of your present condition, it will be necessary for the trustees to make good the existing deficiency to depositors, either by direct payment or by satisfactory personal bonds, guaranteeing the depositors against loss by the present impairment of assets.

I would also suggest that all expenses not absolutely required in running the bank be dispensed with. It would seem that *one* paid officer, with his subordinates, would be all that would be needed until such time as your business is increased and your deficiency made good.

Trusting you will submit this letter to your board at the earliest opportunity, and awaiting their action and reply.

I am, sir, truly yours,

D. C. ELLIS,  
*Superintendent."*

Part of the letter gives good advice ; but the suggestion of personal bonds of the trustees to indemnify depositors was vicious. Such bonds are not the proper security for savings banks. The proofs here show how difficult it is to realize on such obligations, as well owing to legal defense as often to pecuniary inability to pay. The very possession of such obligations by a savings bank as means to show assets above liabilities should be enough to close it up immediately. The new depositor expects to have his money invested in the proper securities, and not trusted to doubtful persons, on questionable obligations without any collateral.

The next thing of moment as to this bank was the examination and scrutiny of the bank's report by the clerks of the department. Their corrections made a deficiency of \$28,000 instead of \$5,000, and this fact was shown to Mr. Ellis. This is not denied.

On the seventh of March — two months after — Mr. Reid was sent down to make an examination, and he found a woeful condition: "Deficiency of assets, \$91,898; deficiency of income, \$30,548."

Then he writes a letter, showing that probably \$70,000 more of deficiency exists, but he cannot exactly put his finger upon it at the time; and this letter came up to the department; and Mr. Lamb called Mr. Ellis' attention to it, and therefore he knew all about these things. This matter is not attended to until the first day of June. On the first day of June Mr. Ellis did write a letter to the Attorney-General. The receiver found out that there were 1,300 depositors, and the amount due them \$1,300,000, and he has paid a dividend of about seventy-five per cent. The receiver found in this case the difference between the dealers' ledger and the cash ledger was as much as \$79,000 and upwards — a continual fraud going on there, which a vigorous ransacking by special instructions to Reid to go to the bottom of the concern would have made to appear.

Floyd and Gregory stand before you perfectly vindicated, as men clearly having the right and telling the truth.

We now come to the "People's Savings Bank" of the city of New York.

There was a report on July 1, 1873, by the bank, and at that time the valuations were not carried out. Mr. Lamb, looking at it, told Mr. Ellis he did not have much confidence in the management, and that the secretary was dishonest. That is in the testimony before the Senate.

Reid and Smith, on the 4th of September, 1873, were there on a special examination, and they found a deficiency of \$28,000 on one theory and \$26,000 on another, a report of which was handed in, but both of them making the deficiency of income \$9,000.

On the eleventh of September, Mr. Ellis writes a letter to the Attorney-General, and there was a complaint made to close the bank, but Mr. Ellis consented to have it settled, and the suit was dropped, and the bank ran on.

Now, what did he have before him to justify dropping that proceeding? Nothing. He had proof or evidence of his own eyes, or by the eyes of those appointed for the purpose, that it was in an unsafe position to go on, but he did let it go on. In January, 1874, that bank reported a surplus again. It was small — twenty-nine dollars and thirteen cents. That is like a man's going into the market, who would like to have credit, and saying, "I have twenty-nine dollars and thirteen cents if all my property is sold at what I value it at, and all my debts paid." And yet Mr. Ellis allows the bank to go on. In this report of 1874, the trustees include a lease for a term of years, as



an asset, at \$10,000. July first they make a report showing a deficit of income. The thing was allowed to sleep until November, 1875, with the exception of the examination of Reid and Ellis, of October 19, 1874, which Mr. Ellis denies.

We will discuss that examination of October, 1874. Reid had testified here as to one examination of 1873, and another of 1875; and then, being asked if he made them both, he said, "I made them all." On being asked if there were any more, he said there was one other, and took it out of his pocket, dated October 9th, 1874. By this examination of 1874 he made a deficiency of assets and a deficiency of income. Mr. Ellis testifies he never saw this paper. He said he did go there with Mr. Reid, and he looked at some things, and Reid made some remarks and figures, but he says he never saw the report. Reid thought he showed it to him. Mr. Reid, beyond all peradventure, would inform Mr. Ellis of the result. If Mr. Ellis went away and left him at his work, he would subsequently ask for the result. It would be Reid's business to inform him, and if he did not, it was Mr. Ellis' duty to call on Reid for his statement. Mr. Ellis swears Reid did not inform him; but, if worthy to hold his place for twenty-four hours, he would have called for the examination. He stands contradicted by his examiner, whose character and veracity before you are perfect.

You cannot find this examination in the department. By good luck, you know its contents, Mr. Reid having kept a copy. With all the warnings he had had before, having himself gone into the bank and left Reid examining, and then either neglecting to find out the result, or with full knowledge of it, suffering the bank to go on, it is fortunate for Mr. Ellis that the Governor charges him with no deliberate attempt to do wrong, but calls it gross negligence. The order of the Senate shapes the question so as to decide whether or not he was guilty of culpable negligence. It would be pretty hard for him if he was under indictment for willful neglect on these proofs. Do his learned and distinguished counsel think they would make any headway in defending him against the charge of "willful neglect" in the matter of this bank? He neglected his duty when he had it under his eye in the most perfect manner. Mr. Ellis says, by his testimony, that he was in constant communication with Reid; saw Reid from day to day. On the twentieth of November the bank was closed, and a first-rate man, as you saw here, was the receiver. I asked him about what he got for the lease. "Well, I didn't get much for the lease." There were some three years of it yet to run, and instead of being of value, it was a damage to own it. It was not worth the rent. In order to surrender and be rid of rents, he had to give the landlord all the fixtures and \$1,100 in money. So much for this asset of \$10,000.

There were \$192,000 due depositors, and a dividend has been made to them of one-third of their money. In this case the ledgers of the depositors differ from the cash ledger. This receiver, Mr. French, found in the assets second, third and fourth mortgages, and mortgages on leasehold property. This condition of the bank was bad all the way along its progress, and it grew worse and worse.

They had a long line of trustees' bonds, at one time \$36,000, and then \$55,000, and so it went on.

As to "German Savings Bank," here was the report of the 1st of January, 1875, showing a surplus of \$27,000. Then Reid went there. Oh, what a difference it makes whether you send a man to find out, or let a man stand there to conceal!

Reid found a deficiency of \$77,000, making a difference of \$104,000. He found there was a surplus of income. Reid sends this report to Mr. Ellis, and he writes him a letter calling his attention to it, and then the bank goes on until December. On the twenty-fifth of December, Mr. Ellis sends his friends in the German Savings Bank the merry Christmas greeting — Please get ready to make a sham report New Year's day; and they did. Seven months of rottenness being developed before him all this time, and seven months of cruel wrong upon these poor people. The trustees come right in after that, in January, 1876, with a report of \$11,877 surplus on the first of January; but their own minutes at the same time showed they were short \$24,000. It was a false report. January 1, 1877, they sent in another sham report, and Mr. Smith went through that thing, tabulating it, and showing his work to Mr. Ellis, and Mr. Ellis did nothing with it. General Siegel seems to have tried to remedy the difficulties, but he could not accomplish much. It would not "fight mit Siegel." This bank was closed February 7, 1877, and the minutes of the board show it was \$24,000 short at the time mentioned, when they claimed a surplus; and shows an enormous deal of shuffling among these people, claiming they should have their bonds back, and all that sort of thing.

This is the case where they charged furniture to the cost of the bank building. They charged fixtures to the same account. They charged to the cost of the bank also a commission they had given to their building committee; and finally charged \$140 for wines they drank in celebrating the completion of the building. Those all appeared in the minute book, and the books were kept in German and English, so that Mr. Ellis' department might read them. On closing the bank, the amount due depositors was \$230,000. Value of assets, \$177,022.90, making the institution insolvent to the extent of \$40,000, and upwards. There does not seem to have been any attempt to merge this concern. It swallowed itself.

We examined Mr. Best to show what was the extent of the receiver-ship expenses. He showed you that he paid a moderate lawyer's bill and a little clerk's hire, and had not received any thing himself, and he exhibited good judgment in the matter, and will receive such sum as the court will give him hereafter.

I next call your attention to the "Loaners' Bank" of the city of New York. One of the Messrs. Tracy referred to in this case is my humble self. A letter was written by me to Mr. Ellis for information as to whether the bank had made any report, and whether he was aware they were doing a banking business, and calling his attention to the charter, which says they should report; that is all. I believe there was no response to it. It was not material. I heard they had not made a report.

William Tracy, another gentleman, not of my firm, was called upon as an expert in the law to give his opinion whether that bank was subject to the act of 1874. I never knew that he gave such an opinion until after it occurred. It was a very clear, handsome opinion, saying he was requested to give his opinion as to whether the Loaners' Bank was subject to the act of 1874; and he goes through with a process of reasoning, and says at the bottom: "I think, therefore, they are not subject to the act of 1874, but they are only bound to report like other banking institutions, and according to their charter" — a good, sound opinion. The Attorney-General said the same thing.

All these matters lingered along from time to time, but, in point of fact, the officers of the bank never had reported, and they were bound to report every year. The question was, whether it was anybody's business to see to it if they had not reported. Ellis' office was the one to say that they should report. It was a miserable thing, with its assets reduced almost to nothing; where stockholders and creditors suffered alike; all which might have been prevented by early exposure.

The "New York State Loan and Trust Company" presents another case where there was an examination and a deficit was found, and Mr. Ellis let it alone vigorously, as he usually did such things, until by-and-by the stockholders put it into the hands of a receiver, and there it was carefully wound up by an excellent receiver, as you saw here, Mr. Spalding, who will get out of it all there is in it, and not charge a penny more than he ought to have.

I now come to the "Security Savings Bank." Mr. Reid went there in November, 1875, and found a deficiency of assets and a surplus of income, and he writes a letter to Mr. Ellis. The first of January they reported again and there was a deficiency. There was nothing done to make up the deficiency. It is not carried to the Attorney-General

until the first of February. The stockholders proceeded upon it themselves; they got fifty-seven and a half per cent, and probably will get two and a half per cent more.

Mutual Benefit Savings Bank of the city of New York. That is the case where Reid and Aldrich, examiners in 1873, found a deficit of assets of \$11,455.68, and a deficit of income of \$2,893.10.

In January, 1874, the bank reported—and here is a novelty—so much assets and so much liability, by name, and then in this way; “Balanced by trustees’ obligations to make up deficiencies of assets to amount of \$5,978.11.”

When the half year comes around in July, 1874, they put in new figures to make it balance to a cent: “Balanced by trustees’ obligations to make up deficiencies of assets to amount of \$7,915.58.”

They had to increase those figures about \$1,600 at each report, of which there were three. Reid examined into the thing on the fifteenth of November, a regular examination. There was no diligence shown by Ellis. But the time came when he had to proceed by examination and then he found this large deficiency. This bank was closed by the action of the depositors. They had a receiver appointed, and they will receive about fifty per cent. There is no explanation given of those things.

A savings bank has no capital to begin with; and, when there are no assets, it is simply robbery to take deposits. The charters granted design to have each of these banks receive deposit and invest them “for the use and benefit of depositors,” and then to pay the depositors such moderate interest as they can consistently with their expenses, keeping a small surplus over to guard against contingent losses. All the interest made in one year out of depositors, should be given to those very depositors, saving a reasonable surplus; and what a wicked thing it is that the depositors of the year 1877, should get only a portion of their interest back again or principal either, and their money be taken to pay a debt contracted two or three years previously. The bank might as well take it to pay the debt of some other man, or say, some fire insurance company. Nothing could be more outrageous. The money is not invested and interest collected for the benefit of the depositors, but for the purpose of filling up a gap when other depositors were losing. That is on a par with the idea that this gentlemen, in his high prerogative, with his discretionary power, not appealable from or reviewable, should look at the interests of commerce generally; that he could ignore the interest of one little savings bank and throw it away to save another!

Here is what Mr. Stewart says—a witness they call: “I would not advise allowing a bank to receive deposits with a deficit of \$219,000.”

Mr. Sisco says : " In such a case I would wind it up immediately."

Mr. Macy says in reply to this question : " Would it be proper or right to allow a bank to receive deposits, with a deficit of \$219,000 ? No, sir."

None of them were so dull as not to know that a man who is not worth a cent ought not to have a line of credit. If his capital is a minus quantity, he is not fit to have any credit.

If they claim the superintendent can do these things, Mr. Ellis is not a man the government of the State of New York or the laws of the State of New York, or the interests of society can support in that office.

Senator JACOBS—Mr. President, I move that the time of the session be extended indefinitely.

The President submitted the question on the motion of the Senator from the Third [Mr. Jacob], and it was decided in the affirmative.

Mr. TRACY [resuming]—Where did Mr. Ellis get this great, dispensing, supreme power, to consider the interests of commerce in discharging the duties of this office ? All his powers are taken from the statute. His counsel have been astute to observe that the statute gave him some discretionary power. Where did he get his power to become, as he did, the protector as he says, of banking institutions and finance ? He really became the protector of dishonest trustees and not the protector of depositors. He had a high mission to perform in his office. It was to protect these poor people, and he allowed them to be robbed. The superintendent's powers are ample for all purposes of good in relation to savings banks.

There was a criticism as to what the word " whenever " meant in this statute. " Whenever it shall appear," etc., the superintendent is to act. The dictionary gives simply " at the time." It means that at the time, when a matter is so and so, at that same time the superintendent shall do such a thing. When it shall appear to him that a certain thing exists, at the time, he shall take such and such action. It is very much like the term we use in every common contract, like leases, " to pay the rent, whenever due," that is whenever the quarter's rent falls due he is to pay.

I am obliged to the Senate for the extension given to me and I will avail myself of it a little longer. The amount of deposits in these savings banks whose cause we plead before you in behalf of the State is nearly \$400,000,000. It is wonderful how little mites accumulate and make this great amount. These deposits sometimes produce great beneficial results. When there is a dearth of labor and a high price of provisions, it is a consolation to think that in the savings bank there is a fund left to take care of the wants of these poor people. It brings a peace of mind not only to the poor but to the well-to-do, to

know that these people out of their small savings can tide themselves over the hard places and be comfortable to the end.

I submit to this honorable Senate that the credit of the State of New York is involved in this matter. Our banking laws have been copied in other States and by the Federal Government as the work of wise men with large experience; and if we are to be informed here that you cannot turn this man out, if we are to learn that you cannot examine a witness under oath on such an investigation, then, indeed, we have arrived at a sad pass, and the good machine goes for naught.

I do not believe, gentlemen, in considering the matter, you will say that the machine is not a good one. A proper man in the place there will take care of it. I would not be afraid to trust it to the subordinates in the office. Mr. Lamb himself had charge of it a few weeks and nothing wrong happened then. Mr. Reid is a good, sharp examiner. Somewhere and somehow a man can be found to take the office of superintendent and to manage it properly. How much better it would be to make Ellis' vacation perpetual and let Mr. Lamb run it until somebody shall be constituted superintendent.

The question before the Senate is, whether the recommendation of the Governor to remove him is to be adopted, or his exercise of the office, such as it has been for four and a half years, is to be continued still longer. The holding of an office is for the public service. It is not for mere gratification that men are put into office. Some gentlemen may desire office, but, when it is conferred, the intention is not particularly to please them, but to have the public well served. No citizen has the right, morally, to hold an office which he does not well serve. It is against the true interests of society. He had better be back with the millions of us who have never held an office, and let somebody take his place.

I rejoice, at the close of this matter, that the question whether this incumbent is longer to continue in office is not left to him, this honorable Senate is to say whether he shall remain in or go out.

The PRESIDENT — The arguments are now closed. What is the further pleasure of the Senate?

Senator JACOBS — Mr. President, I now move the Senate go into executive session.

The President submitted the question on the motion of the Senator from the Third [Mr. Jacobs], and it was decided in the affirmative.

The President put the question whether the Senate would agree to the following:

“ Was the respondent guilty of culpable negligence in the performance of his official duty, as Superintendent of the Banking Department, in regard to any of the banks, and in any of the respects mentioned in the charges contained and accompanying and referred

to by the message transmitted by his Excellency the Governor, to the Senate, bearing date the 5th and 23d days of April, 1877?"

And it was decided in the affirmative. •

*For the affirmative.*—Baaden, Bixby, Bradley, Coleman, Gerard, Hammond, Harris, Jacobs, Lamont, Loomis, McCarthy, Morrissey, Robertson, St. John, Sayre, Schoonmaker, Sprague, Starbuck, Tobey, Wagstaff, Woodin—21.

*For the negative.*—Carpenter, Cole, Doolittle, Emerson, Kennaday, Moore, Prince, Selkreg, Vedder, Wellman—10.

Senators explained their votes upon the foregoing proposition, as follows :

Senator BRADLEY when called upon to vote said :

Mr. President, we are now required to express the judgment of the Senate upon the subject of inquiry. By the light afforded by the evidence, to determine whether the duties devolving upon the Bank Department have been performed; whether the powers with which that department is, by law, vested, for the protection of the public in their dealings with savings banks, have been exercised in respect to the institutions in question, for the protection and security of depositors, to the extent which an appreciation of duty by the head of that department required. It appears that the banks in question were in a deplorable condition; that instead of being places of safety for the protection of the savings of the people, they were quite the contrary. Their appearance was delusive, and they were snares in the community. They had for a long time been unsound and utterly unfit depositories. The consequences were disastrous to the multitudes who deposited their earnings in them. It turns out that a very small percentage only of the money put in them will be received by the depositors. Thousands of the poor have lost nearly all they possessed by their confidence in these insolvent banks.

The Bank Department was established to guard the public against such disasters, and was vested with ample power to examine into, as certain and keep advised of, the actual condition of these institutions, and, if unsafe and insecure, to require or compel them to suspend, and if necessary, wind them up. The department, in respect to these banks, was not of much service to the public. The fault which gave to the depositors the disastrous consequences was primarily with the management of the banks. There were circumstances appearing in the reports of the banks and of the examiners, from time to time, which should, and in some instances did, excite suspicion that they were not worthy the confidence of the public, and it would seem that a degree of diligence might have been applied that would have exposed their infirmity, and prevented much of the loss that has followed.

The charge against the superintendent is that of culpable negligence as a public officer. This charge implies no bad faith; nor does it impute any corrupt purpose or practice to him, and I am pleased to say that the evidence does not authorize any charge of moral turpitude against him. It is now apparent that much of the losses suffered may have been prevented by early decisive action of the superintendent. That all the banks involved in this inquiry, should have been closed long before they were; and circumstances of suspicion surrounded the most of them which, as now seems, then required more vigilance than was indicated by the department. But the superintendent relied upon their appearance the more favorable to their success, and undoubtedly believed that, although they were weak, they would be able to take care of their depositors, and they were permitted to continue much too long. This policy of delay has been unfortunate. The superintendent has failed, as it now appears, to perform his duty in respect to nearly all these banks referred to. But the appearance of reports and examinations made of the banks, may have produced a difference of opinion as to what should be done respecting all the banks, except the Third Avenue Savings Bank, and as to them, although his omission to act now appears unwise, there may be some plausible excuse offered; but there is none for his failure or neglect to wind up the Third Avenue Bank. The report of that bank of January, 1875, apparently contained false values. The superintendent evidently appreciating this, caused an examination which was made of the bank in March, 1875, and thereby was exposed a deficiency, \$219,000 of assets, and \$44,000 of income, and the superintendent then and thereafter had no hopes or expectation that the bank would recover, but deemed it hopelessly insolvent. His duty, then, was clear; the bank should have been closed at once. It was not done, but continued business as usual, more than six months thereafter, until 29th September, 1875, before any proceedings were taken to close it. In the mean time the public were not advised of its insolvent condition, nor were the officers of the bank in any manner prevented from imposing upon the confidence of the people, as they did, by receiving deposits from 700 new depositors, amounting to \$130,000, of which \$96,000 remained when the bank was closed on 29th September, and nearly \$1,500,000 then remained of liabilities to depositors. The condition of the bank continued to get worse from the time of the March examination until it was closed, so that the result has been a dividend of fifteen per cent to the depositors.

The reason given by the superintendent for this delay is that the sensitive condition of the money market was such in the city of New York, in the spring and summer of 1875, that the closing of this bank would, in his judgment, have disturbed other financial institutions of



the city, and may have resulted disastrous to some of them, and as a whole, the remedy would have been more disastrous than the evil sought to be prevented, and that, inasmuch as he used his best judgment and discretion in the matter, he was justified and should be sustained, and is not chargeable with negligence, although he erred. This position has been very ably maintained by the argument of his counsel. The position thus taken by the superintendent was evidently erroneous and improper. He should have acted solely in reference to the interest of the depositors of this bank when he found it hopelessly insolvent. The law required him to do so. Delay, based upon mere speculation of consequences to other financial institutions, by a proceeding to cure the evil existing in one, cannot be justified when the consequences so injurious as that was, likely to come, and did in fact come to the public by permitting the bank after March, 1875, to defraud the community. The delay was a great mistake. The superintendent was at least, misguided by his judgment. He exercised a discretion, if we may call it such, in violation of what he declared in one of his letters to be [the settled policy] of the department. That policy to thus close upon a deficiency of any magnitude appears, unless it is supplied at once, is in accordance with the requirement of law.

This delay it seems to me, was culpable negligence on the part of the superintendent. Any negligence that is prejudicial is culpable. There may be degrees of culpability, but any omission to perform duty is negligence, and to render it culpable does not require any particular degree of negligence. Nor can the failure to perform official duty be called error or mistake, as distinguished from negligence, except in those instances where the duty is judicial merely.

The question is one arising between the Bank Superintendent and the public; and as between his department and the public there is but one standard of diligence. What is negligence in the head of the department at one time, would be no less so under the same circumstances at another time. The determination of that question does not depend upon the character or quality of mind or ability of the superintendent. The department is established for certain public purposes, which demand a certain degree of vigilance and action. Any thing short of those requirements must in law, be deemed negligence of the department to perform duty. And public policy will not and should not require the public to accept as an excuse that the officer was led into error by misguided judgment.

It, therefore, seems to me that official inefficiency, as applied to the Bank Department, is negligence, whatever may have been the motives, purposes or desire of the superintendent.

This is one of the most important departments in the State government. The moneys in the savings banks have grown to upwards of

\$300,000,000. Mostly I assume made up of the earnings of the poorer classes deposited for safe keeping. The State, through the Bank Department, has undertaken to provide a sort of guardianship over those funds to protect the interest of those who deposit their money in those institutions, by seeing to it that those banks are, and continue to be properly conducted, that the securities in quantity and quality, are adequate to indemnify their patrons against loss, and for that purpose almost unqualified power is by law vested in the Bank Department.

In the instances in question, it has failed to come up to the requirements upon it. I have not without careful consideration of the evidence, reached the conclusion now to be expressed by my vote. It would be a pleasure if duty premitted to relieve the superintendent from the charge of official negligence, while I exonerate him from all improper motives, and give him the credit of desiring at all times to have the duties of the department creditably performed, his inefficiency in respect to the banks in question, and more especially as to the Third Avenue Savings Bank, constitute, in my judgment, culpable negligence, and require a change in the administration of the department. I therefore vote in the affirmative.

Senator GERARD, when called upon to vote, said:

Mr. President, my reasons, in brief, for giving an affirmative vote on the question proposed, are as follows: I find, by the evidence, that the conduct of the affairs of the Bank Department, under the present superintendent, have not been characterized by that vigilance and diligence that the proper discharge of the duties of the office require, and which the public rely on for protection.

I find, in the case of at least four of the insolvent banks whose affairs have been under review here, that the department took no action, at the proper times, to check the illegal and fraudulent action of the bank officers, but allowed them to proceed without that rigid scrutiny and prompt action required under circumstances of the gravest suspicion, brought to the knowledge of the superintendent, and more than sufficient to call from him a thorough official inquiry.

In the case of the Third Avenue Savings Bank, a deficiency of \$219,000 was reported to the superintendent by the examiner, in March, 1875, and the bank was then rated by him as hopelessly insolvent. No steps were taken by him to close it, for a period of six months. During that period the bank was naturally deemed solvent by the community, and deposits to a large amount were made, which have resulted in great loss.

The pleas in avoidance of the charge of neglect, in this connection, are not, to my mind, satisfactory. The principal one is that the superintendent had a large discretion, and an alleged apprehension in his mind, that discredit might be thrown on other insolvent banks, or

on financial centers, if he performed his duty in connection with the bank in question, does not seem, under the spirit and wording of the laws, a sufficient excuse or palliation.

The law requires that when a bank is found to be unsafe by the superintendent, he is to denounce it to the Attorney-General, for the purpose of its dissolution. The theory that there is an enlarged discretion above the law, in cases of hopeless insolvency, as claimed by the superintendent, I consider an unauthorized theory.

Such a view of his powers will of course continue to be entertained by him and acted on in case of his continuance in office. It would be fraught with danger to the community, and this claim on his part will, in my mind, in connection with what has been disclosed in evidence, justify my vote for his removal.

In coming to this conclusion, I recognize the fact that nothing has appeared in evidence in this investigation, impugning the personal character or honor of the superintendent.

Whatever faults of omission there have been seem to have resulted to a great extent from a blind, indulgent trust, and an undue, unwarranted, and extraordinary confidence in others. This I consider was not in accordance with a vigilant, energetic and conscientious discharge of his high official duty.

Senator HARRIS, when called upon to vote, said :

Mr. President, I desire briefly to state the reasons for the vote which I shall give in this matter. As I understand the law defining the duties of the Superintendent of the Banking Department and the evidence which has been placed before the Senate touching his treatment of those duties, the management of the department under the respondent has been in conflict with the requirements of the statute:

The law applicable to this matter imposed upon the superintendent two duties, as follows:

First. "Whenever it shall appear to the superintendent \* \* \* that any savings bank (or such corporation) *is conducting business and its affairs in an unsafe manner, he shall*, by an order \* \* \* direct discontinuance of such illegal or unsafe practices, and a conformity \* \* \* with safety and security in its transactions."

Second. "Whenever it shall appear to the superintendent that it is *unsafe or inexpedient* for any savings bank (or such corporation) to continue to transact business, *he shall* communicate the facts to the Attorney-General, who shall thereupon institute proceedings," etc.

Therefore, whenever, that is, at the point of time when, *it appeared* that a savings bank was guilty of unsafe practices, or whenever *it appeared* that it was unsafe or inexpedient, that is, unsafe to the depos-

itors therein, or, for the community doing business with it, for a savings bank to continue to transact business, an absolute duty was imposed by law upon the superintendent to act, and to act immediately. No discretion was left to the superintendent. The statute is mandatory. These words "*he shall*," used as they are here without limitation, express a command as emphatic as can be given. They leave no question for the exercise of judgment. Whenever it appeared, etc., the duty was then imperative upon the superintendent to order the bank to discontinue its unsafe practices, or to report it to the Attorney-General for his action.

The testimony shows that the duty thus imposed by law has been uniformly neglected by the respondent in the cases of the banks which have been presented to the Senate.

The following instances, taken from the number of banks concerning which proof has been given, illustrates and characterizes the official conduct of the respondent and his disregard of the plain requirements of the statute :

The Trades' Savings Bank, according to the letter of Mr. Reid, the examiner appointed by the superintendent, of February 5, 1874, was, at that time, doing an unsafe business. In November, 1875, he reported it deficient both in assets and income. On the 4th day of January, 1876, he writes to the superintendent that it was not only guilty of fraudulent practices, but had not and could not make up its deficiency. Again, on the nineteenth day of January, Mr. Reid informs the superintendent, by letter, of fraudulent transactions by the trustees, and that not a dollar had been put in towards its deficiency. Mr. Lamb, the Deputy Superintendent of the Banking Department, swears that he should have closed the bank at that time; yet it was allowed to run until August, 1876, when Mr. Lamb, who had power to act in the absence of the superintendent, reported it to the Attorney-General for his action, when the superintendent was away. The depositors will not receive over ten per cent of the moneys they intrusted to it for safety.

The People's Savings Bank was insolvent two years before it was closed, and the superintendent so reported it to the Attorney-General. In verifying the complaint on the 13th of September, 1873, he swore it had been insolvent for more than one year before that. The suit was afterwards stopped upon the suggestion of the superintendent, and the bank allowed to go on under the promise of its officers that they would supply the deficiency. Two years after, and in November, 1875, Mr. Reid reports to the superintendent that the deficiency had not only never been made up, but had increased. Then the bank was again reported to the Attorney-General. The

trustees were permitted to fritter away the depositors' money during three years of insolvency known to the superintendent.

The Abingdon Square Savings Bank was reported by the bank examiners to the superintendent in December, 1873, deficient in assets and income, and yet, according to the examiner's letter to the department of July 19, 1876, the bank went on more than two years, making the reports to the department of their standing by means of bogus deposits and fraudulent checks. There was no interference with it until July 29, 1876, when Mr. Lamb, in the absence of the superintendent, reported it to the Attorney-General for his action. The depositors have received fifteen per cent on the amount of their deposits.

The German Savings Bank of Morrisania was reported by the examiner to the department on the 24th of April, 1875, to be deficient in assets in a sum over \$75,000, yet no steps were taken by the superintendent, excepting writing a letter to the bank December 25, 1875, calling attention to the deficiency, until February 24, 1877, when, at the request of the trustees, the bank was reported to the Attorney-General.

The Third Avenue Savings Bank was probably insolvent in 1871. In 1873 it was clearly so. The reports to the department revealed the situation of the bank, as is shown by the tabulation made therefrom, in 1873, by Mr. Smith, a clerk in the department. Whether Smith's tabulation was shown to the superintendent is of but little consequence. The superintendent should certainly have been sufficiently alert to have obtained the same information from the reports and the schedule of assets accompanying them that his clerk acquired therefrom. The superintendent, however, states that he took his predecessor, Mr. Howell's official statement, and did not take pains to inform himself in regard to the condition of the bank. In March, 1875, the bank had become so bad that the examiner writes to the superintendent that the rats are leaving it, and reports it deficient in the sum of \$219,000; over the guarantee bonds of the trustees, to the amount of \$115,000. The respondent swears that when that report was received he became satisfied that the bank would have to be closed; and afterwards, in verifying the complaint of the Attorney-General, on the 29th day of September, 1875, he swore that the bank had been insolvent for more than a year before.

Notwithstanding this utterly insolvent condition of the bank, so confessedly known in March, yet the bank was allowed to continue to transact business until the twenty-ninth of September, when at the request of its trustees it was reported to the Attorney-General. Between Mr. Reid's report in March, and the close of the bank September twenty-ninth, it received in new deposits \$319,000 and 700 new

depositors, who have received but fifteen per cent on their deposits from the assets of the bank.

From the facts proven in this matter it cannot be questioned but what the superintendent permitted insolvent banks to continue business after it became known to him that they were insolvent. It cannot be doubted from the evidence but what it appeared to him that in the cases of the banks cited, the interests of the depositors in the respective banks, required that they should be closed, and that it was unsafe and inexpedient for them to continue to transact business. Yet in none of the cases did he order a discontinuance of unsafe practices. In none of the cases did he report a bank to the Attorney-General when it appeared that it was unsafe, but failed to do so until the bank had gone so far down that it could go no further.

The policy, if any, of the superintendent was one of leniency. If a bank was deficient of assets to meet its liabilities, it was permitted to continue business under one pretext or another, generally by making a promise to supply the deficiency or attempting to make it up, which invariably proved futile. No matter how unsafe or inexpedient it appeared for a bank to continue to transact business it seems to have been thought best by the superintendent in disregard of the provisions of the statute, to let it keep up and along until it fell of itself from exhaustion.

The reasons assigned by the superintendent for not acting promptly in these cases, shows the wisdom of the law in withholding discretionary power. The excuse given for the neglect is that he allowed these weak banks to continue business to prevent panics in regard to other savings banks, and to give them a chance to recuperate or to merge into solvent banks. These reasons are untenable, and cannot be supported by sound argument. New depositors clearly should not be lured into endangering their savings in order that the savings of others already imperiled may possibly be rescued from jeopardy. It is also clear that decisive action by the controlling power is the best method of increasing confidence, dispelling distrust and insuring safety. Neither in reason could any delay of action be predicated upon so forlorn a hope as that a sound bank might merge or incorporate into itself an unsound one.

In thus disregarding the duties enjoined by law upon the Superintendent of the Banking Department the respondent was guilty of negligence, not simple negligence which harmed no one, but negligence often repeated whereby others suffered, and therefore culpable negligence.

Arriving at this conclusion, a vote in accordance therewith is less embarrassing than it otherwise might be for the reason that it will not

impeach the character of the respondent for integrity, which has not been questioned.

Senator KENNADAY, when called upon to vote, said :

Mr. President, I propose to say but a word or two, in explanation of the vote which I shall cast upon this question. The evidence has satisfied me that whatever may have been the offense of the Bank Superintendent, it was not that of culpable negligence. The course which he pursued was not the result of ignorance or of carelessness ; on the contrary, he used all the methods at the command of the department to ascertain the condition of the banks. He acted intelligently, and not from want of information — deliberately, and with a well-defined policy, and not carelessly or negligently. He may have acted differently from what he would have done had he possessed the light which we now do. We look back upon a period unprecedented in its startling and long continued depreciation of values — an anomalous period which he cannot be blamed for not anticipating. His motives are not impugned. His integrity is not questioned. If he committed any offense it was from an error of judgment — formed not recklessly or hastily, but carefully and deliberately and in the exercise of a discretion which he honestly believed, whether correctly or not, the law gave to him and which he supposed it was both his right and his duty to exercise. These being my convictions, I cast my vote in the negative.

Senator MCCARTHY, when called upon to vote, said :

Mr. President, I entered upon this trial with feelings of friendship for Mr. Ellis, with the idea that his mistakes were mainly errors of judgment. I have waited patiently through this long and tedious trial for some proof that would support this feeling, but I have been disappointed. In the management of all these banks for which the superintendent is on trial, there has not been the first indication of efficient and energetic action. The office is a very important one. Great ability, sound judgment, combined with great energy of character, are the qualities that should be possessed by the person holding the office. No man holding this office should be content with simply following the rules or precedents of his predecessor. I differ with some Senators as to the effect of his course in strengthening or weakening public confidence. The Superintendent of Banks should be as the sentinel upon the watch-tower, who espies the danger afar off — ready to take such prompt and efficient action as each case may demand. The laws are sufficient ; their efficiency depends upon the man whose duty it is to see that they are executed. The people look to the superintendent for the performance of that duty, and in proportion as he does that duty they have confidence in the strength and soundness of savings banks. In my judgment, based upon the testimony, Mr. Ellis is guilty of culpable neglect, and I vote aye.

Senator PRINCE, when called upon to vote, said :

Mr. President, no man of intelligence can fail to be struck with the extent and serious character of the failures of savings banks within the past two years.

No man with a heart can fail to have his deepest sympathies excited for those who have suffered loss by these failures, including, as they do, many whose all, the fruit perhaps of a life-time of frugality, has been ruthlessly swept away.

It is probably true that a less proportion has been lost on deposits in savings banks than on money invested in most other ways ; that the percentage of loss has been smaller than the average shrinkage in value of real estate or stocks or bonds.

But this is not a matter for comparison. No mercantile failure, no losses by those of large means, so strongly appeal to our feelings.

These are not ordinary investments for profit or speculation, but the slow, gradual savings of those who have earned each dollar with the sweat of the brow, and with many of whom the scanty amounts have been accumulated only by sacrifice and privation, and where every cent represents some equivalent loss of comfort.

For such deposits there should be *absolute* security ; and where that security fails, we naturally look to see who can be held responsible, and, if there is culpable misconduct, where punishment can be administered.

There is no doubt that, while most of the recent difficulties are attributable to the continued depreciation of securities, yet, in some of the institutions that have failed, there have been dishonesty and barefaced swindling on the part of officers, and if any such can be reached by the strong arm of the law, I hope that justice will be done speedily and effectively. But the Senate has not to do with them at this time. The one question, and the only one, before us, to be answered without fear or favor, is simply whether the Bank Superintendent shall be removed from his office for "culpable negligence."

There is no suggestion that Mr. Ellis has not performed his duties with entire honesty and good faith. Even the Governor in transmitting the charges is careful to acquit him of any intentional wrong." He is admitted by all to be a man of the strictest integrity, and his official record in this respect is above reproach.

Neither is it claimed that Mr. Ellis has deviated from the settled policy of the department which was adopted by his predecessors in office. On the contrary it seems well established that he followed carefully the general system which had been in vogue for years.

But his official term has been in troublous times. Within six months of his entrance into office, the memorable panic of '73 had startled the country and commenced the long period of depression



which still exists. Securities fell in value continually. Real estate, generally considered the most solid species of property, became almost a burden and mortgages which had been considered amply secured, if foreclosed, either realized but a fraction of their value, or brought to their owners the land itself as a new source of expense.

We all recognize these facts now. They are household words. Nothing is easier than for us to sit here in 1877 and criticise action taken in 1875. Looking back with a full knowledge of what has since occurred, it is not difficult to see how we could then have arranged matters more successfully. It is but another illustration of the old proverb which tells us in homely phrase that a man's knowledge of an event after its occurrence is far superior to his judgment in advance.

Probably every one of us knows a dozen intelligent business men who have lost largely in the last few years ; and who, if they could have had the knowledge of coming events, the which they have now, would be millionaires instead of being penniless to-day.

Mr. Ellis should be judged by the knowledge which he was possessed of at the time, and not by our information acquired down to the present day.

And yet even taking into account all our knowledge of subsequent events it is difficult to say wherein the superintendent was "culpably negligent." If negligence means inattention, he certainly was not negligent. On the contrary he seems to have pursued with care the policy of conservation which had been that of the department from its information. I cannot, of course, review the evidence now. But, to take an illustration, the result shows that the closing of the Third Avenue Bank, even at a comparatively favorable time, was followed by the failure of several other similar institutions, thus fully justifying the fears of the superintendent, and giving us a sample of what the effect might have been if it had been injudiciously and precipitately closed during the excited days after Duncan & Sherman's failure.

If the attempts of the department to save some of the weaker banks by "merger" under the act of 1875, could have succeeded, thousands of depositors would have been saved from loss. There was scarcely a single bank whose assets in better times and at ordinary prices were not sufficient to pay all deposits; so that if the department could have tidied them over this critical period, no losses would have occurred. Of course when institutions have been wound up in the days when many securities are unsalable and mortgaged property, if foreclosed on, brings almost nothing, great sacrifices have taken place, and all the loss falls on the unfortunate depositors.

The course of Mr. Ellis was to avoid the necessity of these sacrifices,

if possible, and to endeavor to preserve the institutions until, in better times, they could pay every dollar to their depositors. He has testified that he considered that his duty was equally to protect all the depositors in the State, and that his policy was to save the savings bank system, as a whole, from destruction and receiverships, as far as possible in these disastrous days.

If this court should, by its judgment, decide that this policy was wrong, and that every bank should be thrown into the hands of a receiver the moment the market price of its assets falls below its liabilities, it will be a sad day for depositors, who will see the property which is really *theirs* sacrificed in the most depressed times, simply because it *is* temporarily depressed. No private citizen would sell all he had at the lowest point of the market, and yet that is just the effect such a decision would have on savings banks.

It is easy to inaugurate a cast-iron policy which will bring general ruin by its severity, but it will be a poor exchange for the policy of conservation which has heretofore prevailed. In Mr. Ellis' case the desire evidently was to act with such care and prudence in these financially dangerous and uncertain times as to tend to save the great majority of banks and of depositors.

I cannot but recognize, of course, the popular cry for a victim, and the persistent efforts of a portion of the press to force the Senate to sacrifice Mr. Ellis. Others may succumb to these influences, but in my judgment, they are but temporary, and when the facts are fully known, and time has been given, for the sober second thought, the intelligent people of our State will have more respect for the representative who dares to vote as he believes to be right, than for those who are influenced by natural but unreasoning clamor.

Believing that there should not be placed upon the conduct of an officer confessedly honest and of unquestioned integrity who pursued the course his best judgment approved for the safety of the great majority of those placed in the charge of his department, the same stigma as upon a man of dishonesty and corruption, and very certain that the evidence does not show any "culpable negligence" on the part of Mr. Ellis, I vote in the negative.

Senator SAYER, when called upon to vote, said :

Mr. President, I have listened to the evidence in this case with great attention, with the hope that I should be able to find justification for casting my vote in favor of acquitting the respondent, Mr. Ellis, of culpable negligence. I am forced to admit that he has—in my view of the case—neglected his duty to the depositors, in at least one of the savings banks referred to in the charges, the Third Avenue, to such an extent that great loss has been suffered by them ; and he is, in my judgment, guilty of culpable negligence. Therefore, in

obedience to my official oath, and from a high sense of public duty I vote aye.

Senator SCHOONMAKER, when called upon to vote, said :

Mr. President, under the order made by the Senate the question of fact to be passed upon and answered affirmatively or negatively by Senators is as follows :

“ Was the respondent guilty of culpable negligence in the performance of his official duty as Superintendent of the Bank Department in regard to any of the banks, and in many of the respects mentioned in the charges contained in and accompanying and referred to by the messages transmitted by his Excellency, the Governor, to the Senate bearing date the 5th and 23d days of April, 1877 ? ”

The answer to this question involves, to some extent, the inquiry whether the duties of the superintendent are judicial or ministerial in their character. In the one case, the statute might be construed as directory, calling for discretion on the part of the officer ; in the other, as mandatory, specifying the superintendent's duties, and requiring, obedience and prompt action on his part. A reference to the statutes relative to this officer and his duties will answer this inquiry with reasonable clearness.

The act creating the Bank Department (chapter 164, Laws of 1851), has this provision : “ There is hereby established a separate and distinct department, which *shall be charged with the execution of the laws heretofore passed, or that may be hereafter passed* in relation to the banks which are subject ” to certain acts which are specified, being moneyed corporations, which include savings banks. The head of this department is an administrative officer charged with defined specific duties, and clothed with ample power to execute them effectively. Unless those duties, or some of them, are declared to be discretionary, this officer, who is a mere creature of the statute like certain other officers, a sheriff, for instance, has no discretion as to what he shall do in any of the contingencies described by the statute. No discretion is permitted to a sheriff whether he will serve a writ or levy an execution delivered to him. His duty is to execute promptly his process.

The powers and duties of the superintendent, as prescribed by the statute of 1875 (chapter 371), so far as they are material here, are as follows :

By section 43 it is provided, that “ It shall be the duty of the said superintendent once in two years, either personally or by some competent person or persons to be appointed by him, to visit and examine every savings corporation in this State. The superintendent shall also have power, in like manner, to examine any such corporation, whenever in his judgment its condition or management is such as to render an examination of its affairs necessary or expedient.” Full power to

compel the attendance of witnesses and to examine them under oath is given, and also power to examine all books and papers.

Section 44 provides that, "whenever it shall appear to the said superintendent from any examination made by him, or from the report of any examination made to him, or from the (annual) report made by any such corporation, that any such corporation has committed any violation of its charter or of law, or is conducting its business and affairs in an unsafe or unauthorized manner, *he shall* by an order under his hand and seal, direct the discontinuance of such illegal and unsafe, or unauthorized practices, and strict conformity with the requirements of the law and with safety and security in its transactions; and whenever any such corporation shall refuse or neglect to make such report as hereinbefore required, or to comply with any such order as aforesaid, or whenever it shall appear to the superintendent that it is unsafe or inexpedient for any such corporation to continue to transact business, *he shall* communicate the facts to the Attorney-General, *who shall* thereupon institute such proceedings as the nature of the case may require." The act of 1871 (chap. 693), contains substantially the same provisions.

The language of these statutes is the language of command, not of permission. It declares that the superintendent shall in the emergencies specified make his order, or report the bank to the Attorney-General. The statute is as imperative in its terms as language can make it. He must act, not meditate, when the conditions mentioned come to his knowledge. He is allowed no more discretion in respect to his duty than the Attorney-General in respect to his duty when the superintendent's report is made to him.

The statute being peremptory, there is no necessity for resort to judicial authority for principles of interpretation. But there is a general fundamental rule which may be cited.

"Where a public body or officer is clothed by statute with power to do an act, which concerns the public interest, or the rights of third persons, the execution of the power may be insisted on as a duty, though the statute creating it be only permissive in its terms." (*The Mayor, etc., v. Furze*, 3 Hill, 612; *The People, etc., v. Supervisor*, 51 N. Y., 401.)

"The true distinction is, where the provision of the statute is the essence of the thing to be done, and by which jurisdiction to do it is obtained, it is mandatory; otherwise where it relates to form and manner, and where an act is incident, or after jurisdiction has been obtained, it is directory." (Potter's *Dwarris on Statutes*, 223 to 225 notes; *Merchant v. Langworthy*, 6 Hill, 646; Lord Mansfield in *Rex v. Loxdale*, 1 Burr, 447.)

The statute also contemplates prompt action by the superintendent.

The language is "whenever" the conditions shall appear, he *shall* proceed, etc. This can have only one meaning. It means at once promptly, without delay. The reasons for prompt, instantaneous action are twofold. First, that the depositors, the *cestuis que trust*, who are more than creditors, may be protected. Second, that new depositors may not be drawn in and defrauded. Every reason for action at all demands prompt action, and discretion which implies temporizing, negotiation, delay, is absolutely excluded.

It is clear that the statute leaves no discretion to the superintendent. The Legislature reserved to itself the exercise of discretion, and commanded its agent the superintendent, to do certain acts whenever certain specified conditions should be discovered to exist. He is also commanded to be vigilant so as to discover the conditions demanding action on his part.

Regarding the statute as mandatory, and not merely directory, the case is relieved from all embarrassment in respect to the effect upon other banks or upon the money market of closing any particular bank. No such element is to be considered. It is excluded by the plain terms of the act itself. If the Legislature had designed that the action of the superintendent should be influenced by any such consideration, provision would have been made for it in the statute. It would have been expressed as a matter of too much importance to be omitted. The absence of any qualification of this kind, and the peremptory character of the act, are conclusive that the Legislature intended to omit it. The legislative will is expressed in defining the duties of this officer, and requiring prompt obedience on his part. But the argument that a proceeding by the superintendent to close a particular bank would tend to injure all other banks, is entirely fallacious. The argument assumes that so long as a bank is not proceeded against, it must be regarded as sound. If a proceeding instituted against an insolvent bank is notice of the insolvency of that bank, it is also necessarily notice that every bank not proceeded against is solvent and safe. The consideration, it must be assumed, was not overlooked by the Legislature in framing this statute. An excuse for not obeying a statute, which is outside of the statute itself, and against its plain letter, is not to be favored.

How has Mr. Ellis obeyed this statute? How have his duties been performed? He became superintendent in February, 1873. At that time the official reports by the Third Avenue Savings Bank, and other papers on file in his office, showed that the conduct of the officers of the bank, and the character of its assets, were such as to render it palpably inexpedient and unsafe to allow the bank longer to transact business.

Two months afterwards, in April, 1873, a regular examination of

the bank was made by three examiners appointed by Mr. Ellis: Reid, Vrooman and Aldrich, and after allowing a grossly exaggerated value to its assets, reported a deficiency of \$5,735, with almost two-thirds of the assets inconvertible into money, and non-productive. In July, 1873, the semi-annual report of the bank was made to the department showing the same assets and no improvement in condition.

So manifest was the insolvent condition of the bank from this report and the previous ones on file, that Mr. Smith, a subordinate of Mr. Ellis, was convinced that the bank ought to be closed, and prepared a careful statement of the liabilities and assets, setting forth their nominal and their actual or estimated market value, too liberal, in fact, and which Smith testifies he produced to Mr. Ellis, and doubtless did produce to him, and which showed a deficiency of assets at that time, September, 1873, of \$226,072.

Among the assets were the following remarkable investments:

Bonds of divers southern States.....	\$221,500
Banking-house and adjoining lot.....	200,000
Ninety-two acres of unproductive real estate at Tarrytown, at the superlatively speculative valuation of \$1,500 an acre.....	138,000
Divers lots in New York city, most, if not all, of which covered by prior mortgages.....	247,300
An anomalous instrument called a bond, by the trustees to the bank — practically to themselves.....	100,000
Furniture and fixtures in use for a number of years.....	14,980
<b>Total.....</b>	<b>\$921,780</b>

or two-thirds of the whole nominal assets.

Smith's statement put the value of these same items at \$701,050, or \$220,730 less. Whether or not Mr. Ellis actually saw Smith's statement is, in one aspect, immaterial, as it was more the duty of Mr. Ellis than his subordinate to possess himself of the facts exhibited by that statement. The bank reports for January and July, 1874, and January, 1875, showed no change for the better, but, necessarily, for the worse, inasmuch as deficiency of income, depreciation of values and payment of dividends and current expenses had continued to weaken it. In March, 1875, another biennial examination was made by Reid and Aldrich, which, notwithstanding the liberal valuations allowed by the examiners, disclosed a deficiency of assets of \$219,226, and a deficiency of income of \$44,791.

The report of the examiners was accompanied by a letter from Mr. Reid to Mr. Ellis, exposing the glaringly fraudulent condition of the

bank, and declaring his opinion that the depositors would not receive more than fifty cents on a dollar, which implies an actual deficiency of upwards of \$700,000.

No official action by the superintendent followed this information, but the bank was permitted to go on transacting business in the usual way, and consuming the deposits until the twenty-ninth of September, following, when its crippled condition rendered it impossible to go on longer, and the trustees invaded the office of the superintendent and implored him to close the institution, when, by necessary collusion of Mr. Ellis, one of the culprit officers was appointed receiver.

During the period intervening between the last examination, March 22, 1875, and the closing of the bank, September 29, 1875, deposits were made amounting to \$319,337, of which \$138,000 were made by new depositors; and during the same time there was drawn out \$433,978, of which \$34,000 was drawn by new depositors, so that of the \$124,000 of deposits drawn out in excess of those made during that period, \$104,000 was the money placed there by the new depositors.

During the whole two and a half years up to that date, that Mr. Ellis was in the Bank Department as its chief, with ample statutory powers, with full knowledge of the condition of this bank, with every official paper in his office relating to it, showing its notorious insolvency and mismanagement, he issued no order requiring a correction of existing evils, or conformity with safety or security, made no report to the Attorney-General to have action taken by him, and took no steps to protect existing depositors or to save new depositors from the inevitable loss of trusting their money to the institution.

This bank was only a parody upon the statutory as well as the popular conception of a savings bank. The first and most obvious condition of a savings bank is safe and secure assets, readily convertible or collectible for their face; the second is integrity and prudence on the part of its officers. In this bank a large amount of the assets was speculative and precarious, with no certain or market value, inconconvertible into money, and yielding no income; and these assets, though in fact depreciating, were reported as increasing in value; the deposits were dissipated in crediting dividends that were not earned, and in payment of salaries, taxes on non-productive real estate, and other expenses, and new deposits drawn in to share the same fate. When the assets were turned into money by the receiver, a dividend for the depositors of only fifteen per cent was realized, with some contingent assets remaining.

These undisputed facts have an inexorable logic. The conclusion is manifest and unavoidable, that the superintendent was guilty of

culpable, inexcusable negligence. As the direct result of his negligence, large numbers of innocent persons, misled by his inaction, were defrauded of their money.

Supplement these facts with the statement in the annual report of Mr. Ellis to the Legislature for the year 1875, made March 30, 1876, that "the examination of the bank by the department in 1875, *showed conclusively that the interest of the depositors required the bank to discontinue business;*" and the statement in his testimony that on the 3d of May, 1875, "he had made up his mind that the Third Avenue Savings Bank had to be closed up," and his negligence is aggravated to a criminal extent.

The Revised Statutes of this State contain the provision: "Where any duty is or shall be enjoined by law upon any public officer, or upon any person holding any public trust or employment, every willful neglect to perform such duty, where no special provision shall have been made for the punishment of such delinquency, shall be a misdemeanor, punishable as herein prescribed." (3 R. S., p. 983, § 101, 6th ed.)

The superintendent is not now on trial for a crime, but for incompetence, or non-performance of duty. But this non-performance of duty when accompanied with knowledge, the statute denounces as a crime. In this case duty, knowledge, neglect and damage co-exist. The superintendent himself says that it "conclusively" appeared in March, 1875, that the interests of depositors required the institution to be closed, and that he so decided by the third of May following. Every hour he suffered the institution to go on under such circumstances was willful neglect of duty.

The bank was a fraud upon its depositors and the public. Its officers were liable to arrest for fraud for receiving new deposits when they knew the institution to be insolvent. (*Roebbing v. Duncan*, in the Court of Appeals, 3 N. Y. W. Dig., 497.) The superintendent knowing all the facts neglected to take the only steps that could protect unsuspecting depositors from loss.

Without taking time to refer to the other cases, The Trades' Savings Bank, The People's Savings Bank, the Mechanics and Traders' Institution, The Abingdon Square Savings Bank, The German Savings Bank of Morrisania, The Loaners' Bank, it is enough to say that with more or less variation they present the same general condition and history as the Third Avenue Bank, and accumulate a diversity and aggregate of negligence which has rendered the Bank Department a delusion, and its management a reproach to the State. The practice of these banks and the character of a large proportion of their investments could not be tolerated for a moment under any sound system of banking, or with a modicum of the vigilance on the part of the super-



intendent that a prudent man would exercise in his own affairs. With these clear views of the conduct of the superintendent, as brought before us by the testimony, I am constrained by every consideration of official duty and of sound public policy to vote aye upon the question before us.

Senator VEDDER, when called upon to vote, said:

Mr. President, for what has Mr. Ellis been tried? He has been tried in the language of the Governor, for "culpable negligence." If guilty it must then be for carelessly and improperly doing an act or for omitting to perform a duty and which omission worked an injury to some third party. Is he guilty of neglect of duty in not informing himself of the condition of the banks by which information his understanding was to be enlightened and his judgment guided? No, not in that, for all the material facts connected with the banks he knew from reports and personal examination. There is no evidence whatever by which it appears that what he did was done carelessly or negligently. His negligence, if any, therefore, was in failing to act, when he ought to have acted. But what did he fail or omit to do that official duty required to be done. It is claimed that he failed in his duty in this, to wit: in not communicating to the Attorney-General the fact that it was "unsafe or inexpedient" for certain banks "to continue to transact business." Assuming it to be true, then that *it was* "unsafe and inexpedient" for the banks in question "to continue to transact business," and also that this fact should have been reported to the Attorney-General did his failure to do so convict him of negligence. Not at all, unless he was *convinced* that such was his duty, and he neglected to perform it. When is it, I ask, under the law that this "communication" is to be made to the Attorney-General? In the language of the statute it is, "*whenever it shall appear to the superintendent, that it is unsafe or inexpedient for banks to continue to transact business.*" It, then, must first appear to him, that the bank is *unsafe* before he makes the "communication." What does the word "appear" mean in this connection, why simply that when he believes — when his judgment has acted and his mind is convinced that the bank is unsafe, then and not till then, the statute steps in and commands the communication of that judgment and belief, to the Attorney-General. Supposing that in fact *it is unsafe* for the bank to go on, but it does not so appear to the superintendent, is he guilty of culpable or any other negligence in not communicating to the Attorney-General? Clearly not. It is simply an error of judgment. It is a case of not correctly judging the condition of the banks, from the facts before him, instead of knowing its unsafe condition and failing to report it. It is a case of a failure to know, instead of a failure to report what was known. If the facts before him did not, in the exer-

cise of his judgment, make it appear to him that it was unsafe for the banks to continue to do business, then he is free from blame, and such I am convinced was the case. He is no more guilty of neglect of duty in my opinion, in arriving at wrong conclusions, than a jurymen would be who misjudged the weight of evidence in a matter he was to decide. Some may say that he ought to be removed, then, for incompetency, in not knowing all the while the exact and precise condition of the banks committed to his care, and in not having a better judgment. To this I will answer, that such is not the issue we are trying, and if it was, I should hesitate long before arriving at such a conclusion, when it has taken two Governors some six months, and thirty-two wise Senators nearly six weeks, to ascertain that he has erred even in judgment. Senators, if we have properly used our faculties, we are wiser to-day than we were yesterday, and this year than the year before. It is quite easy for us in the light of the present, to see what mistakes we have made in the past, and still easier to see what mistakes others have committed. He is either a very wise man or a fool to whom experience can give no additional understanding. I have no doubt but that had Mr. Ellis known then what he does now, his judgment would have been better. Had he known that the terrible financial crisis through which we have passed was coming, and which, had it not come, the banks would have been saved, he would have judged and acted differently. But who knew it was coming, or the manner of its coming. Who, if any, had such a revelation. Where is the prophet that spoke of it? If here, let him answer. I believe Mr. Ellis acted prudently, carefully and well, and in his judgment for the interest of the great trust committed to his care, and so believing, I vote "no."

Senator SPRAGUE, when called upon to vote, said :

Mr. President, I have been compelled by ill health and imperative business to be absent from the Senate during a few of the days of this session ; but I have read all the evidence, and examined the questions of fact and of law involved in the case, to the best of my ability, and I am reluctantly compelled to vote aye.

Senator STARBUCK, being called upon to vote, said :

Mr. President, but for the legal question raised and elaborately argued by the respondent's counsel, I should not have detained the Senate with any remarks. That question having been raised, and our jurisdiction in the premises having been denied, on the alleged ground that the act of 1823, under which this proceeding is had, was repealed by an act passed by the Legislature of 1867, I desire to say :

FIRST.—By the act of 1823, the power is clearly given to the Governor and Senate to remove the respondent from his office in a case like this.

SECOND.—That act of 1823 is a part of the Revised Statutes, and it is not claimed that any act has ever been passed containing any express intimation of an intent to repeal the act of 1823.

THIRD.—The act of 1867 confers upon the Legislature the power to remove such officer in such case, but it does not, in terms, assume to interfere with the power of the Governor and Senate to do the same thing.

FOURTH.—The two statutes are harmonious ; and it cannot be successfully argued that there is any such repugnance between the two statutes, as must be found to exist, in order to effect the repeal of a statute by implication. The act of 1876, only gives an additional remedy, leaving the old remedy in full force.

I therefore, reach the conclusion, that the power of the Senate to entertain jurisdiction in this case is too clear to be seriously questioned.

The legal question raised, being thus, so far as it affects my own action, disposed of, I am brought to the question of fact involved. On that question, after having listened attentively to the whole testimony and proceedings, and after giving it my best consideration, I am of opinion, that the respondent was guilty of culpable negligence, in the performance of his official duty as Superintendent of the Bank Department, in regard to many of the matters contained in the question propounded. I therefore, vote in the affirmative.

The President put the question whether the Senate would agree to the following :

Shall the Superintendent of the Banking Department be removed from office ? And it was decided in the affirmative.

*For the affirmative.*—Baaden, Bixby, Bradley, Coleman, Gerard, Hammond, Harris, Jacobs, Lamont, Loomis, McCarthy, Morrissey, Robertson, St. John, Sayre, Schoonmaker, Sprague, Starbuck, Tobey, Wagstaff, Woodin—21.

*For the negative.*—Carpenter, Cole, Doolittle, Emerson, Kennaday, Moore, Prince, Selkreg, Vedder, Wellman—10.

Senators explained their votes upon the foregoing propositions, as follows :

Senator BAADEN, when called upon to vote, said :

Mr. President, I had at first intended to ask to be excused from voting on the question of the removal of Mr. Ellis from the office of Bank Superintendent, but after due consideration and carefully weighing the evidence produced before this body, I feel that I would be shirking a sacred duty and violating the trust reposed in me by my constituents if I did not give by my vote expression to my indignation in this case against Mr. Ellis for his culpable, negligent and reckless manner, in which he failed to perform his duties.

My constituents, perhaps more so than those of any other member of this body, are, and have been greatly interested in those savings banks so shamefully permitted to be mismanaged by Bank Superintendent Ellis.

My constituents, chiefly composed of the working classes of New York, who earn their little savings by the sweat of their brow, suffered greatly during the past two years when out of work and robbed of their little savings by faithless bank officers. Mr. President and Senators, I am firmly convinced of Mr. Ellis' guilt of several of the charges before this Senate, and in voting against Mr. Ellis and in favor of his removal from the office as Bank Superintendent I am discharging an obligation I owe to my constituents, the people of this State and to my conscience, and, therefore, Mr. President, I vote in favor of the removal of Mr. Ellis from his office as Bank Superintendent, with the hope that his removal from this responsible office will restore the necessary confidence to savings banks and also procure the election of good, honest and truthful officers for such institutions.

Senator KENNADAY, when called upon to vote, said :

Mr. President, basing my action on this question upon the views which influenced my vote upon the other, I vote, as did before, in the negative.

Senator SPRAGUE, when called upon to vote, said :

Mr. President, I desire, before voting, to say, in justice to Mr. Ellis, that I think there is force in the suggestion made by a member of the Senate, that the Bank Superintendent has not stepped much, if any, beyond the precedents of his office, and that it has for many years been conducted very largely upon the principles which have guided, or rather misguided, him in his administration. My vote is, therefore not so much a condemnation of Mr. Ellis personally, as of the customs which seem to have prevailed during his and previous terms in the Bank Department. I think that the public interests demand a reform in these customs and a condemnation of them by this Senate. Bank reports should not be left to the scrutiny and judgment of subordinate clerks; trustees should not be permitted to supply deficiencies in assets with their personal bonds; and banks irretrievably insolvent should not be permitted to continue business in plain violation of the statute, upon the theory that to close them up will affect other banks or produce a panic in the money market. It is unfortunate for Mr. Ellis that the blow should fall upon him, but he must console himself as did Lord Bacon, who, when impeached and deposed from the bench, very wisely, and, perhaps, truly said, that he had been the justest judge that had sat in England for fifty years, and that it was the justest judgment that had been pronounced in 200 years. <sup>11</sup> I vote aye.

Senator STARBUCK, when called upon to vote, said :

Mr. President, in connection with the vote which I rise to give, I desire to make a single observation. While the respondent stands, in my judgment, acquitted of any imputation of criminal or fraudulent conduct, the whole case leaves upon my mind the conviction that, perhaps, in overkindness to fraudulent bankers who appealed to him, he has given more care to the effort to relieve weak, insolvent, and, perhaps, fraudulent banks, from their embarrassment, than he has to the interest of the depositors to whom he owed the first and paramount duty. Such care of insolvent banks, and such neglect of his duty to depositors, may be, and in some of the cases before us, doubtless has been, no less disastrous to the great interests entitled to protection, than it would have been if accompanied with actual fraudulent intent.

The vote already given, finding the fact of culpable negligence, cannot have its logical effect without the removal of the respondent from his office. Upon this question, as upon the other, I, therefore, vote in the affirmative.



# STATE OF NEW YORK.

## IN SENATE,

SENATE CHAMBER, IN THE CITY OF ALBANY, }  
THURSDAY, *May 24*, 1877. }

Pursuant to a proclamation of his Excellency the Governor, the Senate met in extraordinary session.

Present—Hon. WILLIAM DORSHEIMER, Lieutenant-Governor, and the following Senators, to wit:

District number one.....	L. BRADFORD PRINCE.
District number two.....	JOHN R. KENNADAY.
District number three.....	JOHN C. JACOBS.
District number four.....	JOHN MORRISSEY.
District number five.....	ALFRED WAGSTAFF, JR.
District number six.....	CASPAR A. BAADEN.
District number seven.....	JAMES W. GERARD.
District number eight.....	FRANCIS M. BIXBY.
District number nine.....	WILLIAM H. ROBERTSON.
District number ten.....	DANIEL B. ST. JOHN.
District number eleven.....	B. PLATT CARPENTER.
District number twelve.....	THOMAS COLEMAN.
District number thirteen.....	HAMILTON HARRIS.
District number fourteen.....	AUGUSTUS SCHOONMAKER, JR.
District number fifteen.....	WEBSTER WAGNER.
District number sixteen.....	FRANKLIN W. TOBEY.
District number seventeen.....	DARIUS A. MOORE.
District number eighteen.....	JAMES F. STARBUCK.
District number nineteen.....	THEODORE S. SAYRE.
District number twenty.....	DAVID P. LOOMIS.
District number twenty-one.....	BENJAMIN DOOLITTLE.
District number twenty-two.....	DENNIS MCCARTHY.
District number twenty-three.....	WILLIAM C. LAMONT.
District number twenty-four.....	JOHN H. SELKREG.
District number twenty-five.....	WILLIAM B. WOODIN.
District number twenty-six.....	STEPHEN H. HAMMOND.
District number twenty-seven.....	GEORGE B. BRADLEY.
District number twenty-eight.....	WILLIAM N. EMERSON.
District number twenty-nine.....	DAN H. COLE.
District number thirty.....	ABIJAH WELLMAN.
District number thirty-one.....	E. CARLTON SPRAGUE.
District number thirty-two.....	COMMODORE P. VEDDER.

The proclamation of the Governor was read in the words following

*Whereas*, I have received from the Senate a preamble and resolution in the words and figures following, that is to say :

“ STATE OF NEW YORK :

“ IN SENATE,  
“ ALBANY, *May* 22, 1877. } ”

“ *Whereas*, The testimony taken in the matter of the charges against De Witt C. Ellis, the Superintendent of the Banking Department, will not be printed in time for the use of the Senate during its present legislative session ; and

“ *Whereas*, It is deemed important that the case be considered and disposed of as soon as practicable ; therefore,

“ *Resolved*, That his Excellency the Governor be and he is hereby requested to convene the Senate in extraordinary session immediately upon the final adjournment of the Legislature.

“ By order.

“ H. A. GLIDDEN,  
“ *Clerk.*”

Now, therefore, in accordance with the request of the Senate, and in pursuance of the power and authority vested in me by the Constitution, I hereby respectfully require the Senate to convene in extraordinary session at the Capitol in the city of Albany immediately after the final adjournment of the Legislature, for the purpose in said preamble and resolution mentioned, and for the transaction of such other business as I may find it necessary to bring before it.

In witness whereof, I have hereunto signed my name and affixed the privy seal of the State at the Capitol, in the city of Albany, this Wednesday, the twenty-third day of May, one thousand eight hundred and seventy-seven.

L. ROBINSON.

By the Governor.

D. C. ROBINSON,  
*Private Secretary.*

Mr. Woodin moved that the Senate take a recess until half-past seven o'clock P. M.

Mr. Gerard moved to amend by striking out the words “ half-past seven ” and inserting the word “ six.”

Mr. Sprague moved to amend by striking out the words “ half-past seven ” and inserting the words “ half-past six.”

The President put the question whether the Senate would agree to said motion of Mr. Sprague, and it was decided in the negative.



The President then put the question whether the Senate would agree to said motion of Mr. Gerard, and it was decided in the negative.

The President then put the question whether the Senate would agree to said motion of Mr. Woodin, and it was decided in the affirmative.

## HALF-PAST SEVEN O'CLOCK, P. M.

Senate again met.

Mr. Harris offered the following:

*Resolved*, That the judiciary committee be instructed to prepare and report to the Senate rules for its guidance in the pending proceedings, and report the same to the Senate at its next meeting.

The President put the question whether the Senate would agree to said resolution, and it was decided in the affirmative.

Mr. Woodin offered the following:

*Resolved*, That the following officers and employees of the Senate be and are hereby designated to attend the extra session of the Senate viz.: the Clerk, the Assistant Clerk, the Journal Clerk, the Stenographer, the Sergeant-at-Arms, Assistant Sergeant-at-Arms, the Librarian, the Executive Clerk, the Doorkeeper, the President's Clerks, the Clerk's Messenger and two Pages, to be designated by the Clerk.

Mr. Selkreg moved to amend by adding thereto after the words "clerk's messenger" the word "janitor."

The President put the question whether the Senate would agree to said motion, and it was decided in the negative.

Mr. Harris moved to amend by striking out the words "assistant sergeant-at-arms and librarian."

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Mr. Schoonmaker moved to amend by striking out the words "executive clerk."

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

The President then put the question whether the Senate would agree to said resolution as amended, and it was decided in the affirmative.

Mr. Schoonmaker offered the following:

*Resolved*, That upon the hearing before the Senate in the matter of the charges against De Witt C. Ellis, as Superintendent of the Bank

Department, he have permission to be heard in person and by counsel, and that the Governor be authorized to employ counsel to appear and be heard in behalf of the State.

The President put the question whether the Senate would agree to said resolution, and it was decided in the affirmative.

Mr. Coleman offered the following :

*Resolved*, That the Clerk be directed to forward, by mail, to the Governor, President of the Senate, each Senator and to De Witt C. Ellis, two copies of the charges and testimony in the matter of the charges against the Superintendent of the Bank Department, as soon as the same are printed.

The President put the question whether the Senate would agree to said resolution, and it was decided in the affirmative.

Mr. Woodin moved that when the Senate adjourns, it adjourn to meet on the eighteenth day of July next, at the village of Saratoga Springs.

Mr. Cole moved to amend by striking out the words "village of Saratoga Springs" and inserting the word "Albany."

The President put the question whether the Senate would agree to said motion of Mr. Cole, and it was decided in the negative, as follows:

#### FOR THE AFFIRMATIVE.

Carpenter	Emerson	Lamont
Cole	Hammond	Morrissey
Doolittle	Harris	

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#### FOR THE NEGATIVE.

Baaden	McCarthy	Selkreg
Bixby	Moore	Sprague
Bradley	Prince	Starbuck
Coleman	Robertson	Vedder
Jacobs	St. John	Wellman
Kennaday	Sayre	Woodin
Loomis	Schoonmaker	

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The President then put the question whether the Senate would agree to said motion of Mr. Woodin, and it was decided in the affirmative.

The Clerk designated George Connor and John H. Guenther as the pages to attend the session of the Senate.

Mr. Harris offered the following:

*Resolved*, That the President and Clerk of the Senate be directed to make all necessary arrangements for the meeting of the Senate at Saratoga.

The President put the question whether the Senate would agree to said resolution, and it was decided in the affirmative.

On motion of Mr. Vedder, the Senate adjourned.

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SARATOGA SPRINGS, *July 18, 1877.*

The Senate met pursuant to adjournment.

The Clerk called the roll, when the following Senators answered to their names :

Bixby	Lamont	Selkreg
Bradley	Loomis	Sprague
Carpenter	McCarthy	Starbuck
Cole	Moore	Toby
Colemon	Morrissey	Vedder
Doolittle	Prince	Wagner
Emerson	Robertson	Wagstaff
Gerard	St. John	Wellman
Hammond	Sayre	Woodin
Harris	Schoonmaker	

29

There also appeared as counsel for the prosecution, on behalf of the State, Messrs. Charles Tracy, Dwight H. Olmstead and Edward Tracy, and also the respondent, DeWitt C. Ellis, and his counsel, Orlow F. Chapman and Jeremiah McGuire.

The journal of Thursday, May 24, was read and approved.

Mr. Tracy, of counsel for the State, gave notice of the intention of the prosecution to introduce new testimony.

Mr. Gerard moved that permission be granted for the introduction of additional testimony on the part of the State.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Mr. Starbuck moved to reconsider the vote by which said motion was agreed to.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

After hearing Mr. McGuire and Mr. Chapman, of counsel for the respondent, and Mr. Tracy on behalf of the State,

Mr. Schoonmaker moved to amend the motion of Mr. Gerard so as to read as follows :

*Resolved*, That upon the request of the counsel for the State, additional testimony be taken in support of the charges transmitted to he Senate by the Governor.

The amendment being accepted by Mr. Gerard,

Mr. Woodin moved to amend the resolution offered by Mr. Gerard so as to read as follows :

*Resolved*, That the Senate will receive, upon this investigation, any and all material evidence offered on the part or the prosecution or defense, in addition to the evidence taken by the Senate committee.

This amendment being also accepted by Mr. Gerard,

The President put the question whether the Senate would agree to said motion as amended, and it was decided in the affirmative.

#### FOR THE AFFIRMATIVE.

Bixby	Lamont	Sprague
Bradley	McCarthy	Starbuck
Carpenter	Moore	Tobey
Coleman	Prince	Vedder
Doolittle	Robertson	Wagner
Emerson	St. John	Wagstaff
Gerard	Sayre	Wellman
Hammond	Selkreg	Woodin
Harris		

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#### FOR THE NEGATIVE.

Schoonmaker

1

Mr. Robinson from the committee on judiciary, to which was referred the resolution requiring the preparation of rules for the trial of the superintendent of the bank department, upon the recommendation for removal by the Governor, reported that the committee have had the same under consideration, and have concluded to report the following :

I. The Senate shall, unless otherwise ordered, meet in the town hall of the village of Saratoga Springs daily at eleven o'clock A. M., and continue in session until two P. M., at which hour a recess shall be had until four o'clock P. M., when it shall meet again and continue in session until 6 o'clock P. M. when it shall adjourn. But this rule may be changed by the Senate without previous notice at any time, and the Senate may take a recess or adjourn at a different hour.

II. At its first meeting the charges against the accused and his answer thereto shall be read by the Clerk. The accused shall be called, and if he appear, shall be assigned a place within the bar with such counsel as he shall select to aid him in his defense. The counsel for the prosecution shall also have a place assigned them within the bar.

III. The prosecution and the accused shall alike be entitled to the process of the Senate to compel the attendance of witnesses, signed by the Clerk and sealed with the seal of the Senate, and tested in the name of the Lieutenant-Governor and the President of the Senate, and may be in the form following :

The People of the State of New York, by the grace of God free and independent:

 $T_0$ 

Greeting.— You and each of you are hereby commanded and required that, laying aside all other business, you be and appear in your own proper persons, before our Senate, in the town hall, in the village of Saratoga Springs, on the                                 day of

A. D., 187 , at o'clock M., of that day, to be examined, as witnesses, and to testify the truth, and give evidence in our behalf (or on behalf of the defendant hereinafter named) concerning certain charges then and there to be tried and determined before our Senate, of our said State which have been made against De Witt C. Ellis, Superintendent of the Bank Department of the State of New York, and upon which our Governor of our said State has recommended to our Senate aforesaid that the said be removed from his said office of . And hereof fail not at your peril.

*Witness:* Hon. William Dorsheimer, Lieutenant-Governor of the State of New York and the President of the Senate thereof, this  
day of 187 .

*Attest:*

*Clerk of the Senate.*

And such subpoena may be served and returned in the manner usual in courts of record of this State.

IV. A motion made by a Senator or by the counsel for the prosecution or for the accused, shall be addressed to the President of the Senate, and if he shall require, it shall be reduced to writing and read at the desk of the Clerk; and the decision thereof, after the hearing of the counsel, shall, without debate, be made by the presiding officer. The presiding officer may, however, submit the same to the Senate for its decision, or any Senator may require that the same be so submitted. The decision shall be had without debate, unless a Senator shall desire to debate the same.

Any Senator may move for a private consultation upon any question arising during the trial, and if the same shall be ordered by a majority of the votes of Senators voting, the chamber shall be cleared of all but privileged persons, and such consultations shall be had in private.

The decision reached shall be publicly announced by the presiding officer of the Senate.

All the proceedings in this rule referred to shall be entered upon the records of Senate.

V. Each witness shall be, as he is called, sworn or affirmed by the Clerk in substantially the following form :

You do solemnly swear (or affirm) that the evidence which you shall give upon this hearing upon certain charges preferred against \_\_\_\_\_, and upon which his removal from that office has been recommended by the Governor, shall be the truth, the whole truth and nothing but the truth, so help me God (or so you affirm).

All the rules usual in courts of record, in regard to the introduction of evidence and the examination and cross-examination of witnesses must be observed.

VI. If a Senator shall be called as a witness, he shall be sworn or affirmed, and give his testimony standing in his place.

VII. The final vote of the Senate upon the charges preferred shall be taken by the President of the Senate, who, upon each one of the charges, as it shall be separately read by the Clerk, shall, with its number, propose to each Senator in the order in which his name stands upon the division list, the question : "Senator, how say you, is the first (or second, or whatever) item of the charges preferred against the accused proven?" Each Senator, when so questioned, shall rise in his place and answer "Proven" or "Not proven," and when the division list of the Senate shall have been gone through with upon each charge shall be announced, and shall be entered upon the records of the Senate. If a majority shall agree on the finding, "and proven" upon any one or more of the items of said charges, the president shall, in the same manner put, and the Senators shall in the same manner answer, the further question : "Shall \_\_\_\_\_ be removed from his office of \_\_\_\_\_ for the cause stated in this item (or items) of the charges preferred against him which you have found proven? And the final judgment of the Senate shall be certified to the Governor by the President and Clerk of the Senate.

VIII. The stenographer of the Senate, with such assistants as the Senate shall deem necessary, shall take the oral testimony, and the President of the Senate shall procure the same to be printed for the use of the Senate and counsel, at the opening of the Senate on the day after any part of such printed report shall be brought in; any member of the Senate or either of the counsel may move to amend the same in any particular, to be then stated in writing. The stenographer and his assistants shall be first sworn faithfully to perform their duties as such.

IX. The Clerk shall keep a journal of the proceedings, orders and

judgments of the Senate, and the ayes and nays upon every question in that way decided.

X. The President of the Senate shall direct all necessary preparations for the Senate chamber, and all forms of proceedings not provided for in the rules, and not otherwise ordered.

XI. In the discussion of interlocutory motions and objections before the Senate, the party having the affirmative may be heard in person or by counsel, and the opposite party may then be heard, either in person or by counsel, and then the party having the affirmative may, in like manner, be heard in reply; no other discussion shall be had, and not exceeding thirty minutes shall be occupied in any one address.

The President put the question whether the Senate would agree to said report, and it was decided in the affirmative.

Mr. Robertson offered the following :

*Resolved*, That the counsel for the State is required to set forth, in proper and definite form, the charges against De Witt C. Ellis, the Superintendent of the Bank Department, transmitted to the Senate by the Governor, and deliver the same to the Clerk of the Senate before the morning session of Thursday, and that a copy of the charges be served upon the counsel for the respondent prior to the presentation thereof to the Senate.

The President put the question whether the Senate would agree to said resolution, and it was decided in the affirmative.

On motion of Mr. Robertson the Senate adjourned until to-morrow morning at eleven o'clock.

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SARATOGA SPRINGS, THURSDAY, *July 19, 1877.*

The Senate met pursuant to adjournment.

The Clerk called the roll, when the following Senators answered to their names :

Baaden	Jacobs	Schoonmaker
Bixby	Kennaday	Sprague
Bradley	Lamont	Starbuck
Carpenter	Loomis	Tobey
Cole	McCarthy	Vedder
Coleman	Moore	Wagner
Emerson	Prince	Wagstaff
Gerard	Robertson	Wellman
Hammond	St. John	Woodin
Harris	Sayre	

Also present Messrs. Tracy, Olmstead and Tracy, of counsel for the prosecution, and Messrs. Orlow F. Chapman and Jeremiah McGuire, of counsel for the respondent, De Witt C. Ellis.

The journal of yesterday was read.

On motion of Mr. Schoonmaker, and by unanimous consent, the journal was amended by inserting in Rule VII the words "the result," after the word "with," in line 3, page 8.

The journal, as amended, was then approved.

Mr. Harris offered the following :

*Resolved*, That the President and Clerk be directed to employ two assistant doorkeepers and a suitable person to take care of the room occupied by the Senate during the present session.

Mr. Woodin moved to amend the resolution by striking out the words "two assistant doorkeepers and."

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

The President put the question whether the Senate would agree to said resolution as amended, and it was decided in the affirmative.

Mr. Tobey offered the following :

*Resolved*, That the assistant sergeant-at-arms and postmaster be added to the list of officers of the Senate, heretofore designated to serve at this extra session.

The President put the question whether the Senate would agree to said resolution, and it was decided in the negative.

#### FOR THE AFFIRMATIVE.

Baaden	Tobey	Vedder	3
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#### FOR THE NEGATIVE.

Bradley	Jacobs	Sayre	
Carpenter	Kennaday	Schoonmaker	
Cole	Lamont	Selkreg	
Coleman	Loomis	Sprague	
Doolittle	McCarthy	Starbuck	
Emerson	Moore	Wagner	
Gerard	Prince	Wagstaff	
Hammond	Robertson	Wellman	
Harris	St. John	Woodin	27



Mr. Tracy, of counsel for the State, presented the following :

CHARGES AGAINST DE WITT C. ELLIS, SUPERINTENDENT OF THE BANK DEPARTMENT, AS SET FORTH IN FORM BY THE COUNSEL FOR THE STATE, IN OBEDIENCE TO THE ORDER OF THE SENATE.

FIRST CHARGE.

That De Witt C. Ellis, Superintendent of the Bank Department, neglected and failed to perform his duty as such superintendent in respect to the Third Avenue Savings Bank, of the city of New York, as follows :

*Specification First.*—Said Ellis was appointed Superintendent of the Bank Department February 19, 1873, and entered upon the office directly afterward. The said Third Avenue Savings Bank then was insolvent; and while being so insolvent continued its business of receiving deposits and loaning and investing money in violation of its charter and of law, and conducted business in an unsafe manner, and the assets of said bank on the day last mentioned and all times afterward were largely insufficient to pay its depositors in full, and it was unsafe and illegal for it to receive deposits while in that condition.

That said superintendent, on the 14th day of April, 1873, and at all times thereafter, was informed and had reason to believe that said savings bank was insolvent and was so conducting business in an unsafe manner.

That it was the duty of said superintendent, either in person or by one or more competent persons by him appointed, to visit and thoroughly examine the affairs and transactions of said bank, and that said superintendent wholly neglected and failed to perform said duty until March 22, 1875.

That said bank continued insolvent during all that period.

*Specification Second.*—That, on the 14th day of April, 1873, an examination of the condition of said bank was made by George W. Reid, William F. Aldrich and Isaac H. Vrooman, appointed by said Ellis for that purpose, who reported to said Ellis that at that date there was a deficiency of assets to meet the liabilities of the bank amounting to \$5,735.01, and subsequently, on May 17, 1873, the said Reid informed said Ellis in writing, that since said examination the troubles in Louisiana had rendered their State bonds unsalable and if continued might cause a heavy loss to the bank.

Said Louisiana State bonds amounted to \$100,000.

The said bank made its semi-annual report to said superintendent in July 1, 1873, by which it claimed it had assets in excess of liabili-

ties to \$7,211.38, which said report was false, fraudulent and collusive and greatly exaggerated the assets of said bank, and attempted to conceal the fact that said bank was insolvent, and of which said Ellis had notice.

That said bank made its semi-annual report January 1, 1874, to said superintendent, in which it claimed that it had assets in excess of liabilities by \$6,973.67, which said report was false, fraudulent, and collusive and greatly exaggerated the assets of said bank, and attempted to conceal the fact that said bank was then insolvent; and said Ellis had notice thereof.

That said bank made its semi-annual report July 1, 1874, to said superintendent, by which it claimed that its assets exceeded its liabilities by \$17,231.02, which said report was false, fraudulent and collusive, and greatly exaggerated the assets of said bank, and attempted to conceal the fact that said bank was then insolvent; and said Ellis had notice thereof. That said bank made its semi-annual report January 1, 1875, to said superintendent, by which it claimed that its assets exceeded its liabilities by \$69,660.65, which said report was false, fraudulent and collusive, and greatly exaggerated the assets of said bank and attempted to conceal the fact that said bank was then insolvent; and said Ellis had notice thereof.

That, pursuant to a commission issued by said Ellis to George W. Reid and William F. Aldrich, to examine into the condition, working and affairs generally of said Third Avenue Savings Bank, dated March 15, 1875, the said Reid and Aldrich on March 22 and 23, 1875, made an examination of the affairs and condition of said bank and made a written report to said Ellis, which showed that the liabilities of the bank exceeded its assets by the sum of \$219,226.81, and that the annual expense of the bank exceeded its income by the sum of \$44,791, and that in computing the value of the assets a certain individual bond of trustees of the bank for \$115,000, as guaranty, was included as an asset of that amount.

Said individual bond was not a legal or valid asset of said bank.

That, on the 24th day of March, 1875, the said Ellis received from said George W. Reid a letter, addressed to said Ellis, stating the following facts in reference to said last-mentioned report, viz.: That \$13,000 was due for interest on said guaranteed bond, and that only a few of the guarantors had paid any thing during the past year; that one of the guarantors was dead, and his executors would contest the payment; that another of the guarantors had failed, and that another of the guarantors, it was supposed, had softening of the brain; that from present appearances very little could be collected on the bond; that the house on Fifth avenue, held at \$85,000, had not been rented for two years past; that the trustees had shown a want of financial

capacity on a recent purchase of \$55,000 of Tennessee bonds, at fifty-one per cent; that their January report was made up for the occasion, all the stocks or bonds being put in at par, over \$20,000 past due coupons counted in as accrued interest, and \$31,000 added to the value of Tarrytown property, and concluding thus:

“All the ability and pluck shown three years ago during the ‘run,’ has apparently disappeared, and the old adage of ‘rats leaving a sinking ship’ is being verified in the resignation of a number of trustees during the past year. I do not think the depositors will ever receive more than fifty cents on a dollar.”

That by reason of the matters above in this specification contained, and other information received by said Ellis, it did in fact appear to said Ellis that it was unsafe and inexpedient for said savings bank to transact business, and it became and was his duty immediately to communicate said facts to the Attorney-General, to whom it belonged, in such cases, to institute proceedings which the nature of the case might require. But said Ellis wholly neglected and failed to communicate the same to the Attorney-General then or at any time thereafter, and said savings bank continued business until September 28, 1875, and the said Ellis well knew it was so continuing its business during all that time; on which said last-mentioned day, at a meeting of the trustees of said bank, held at 7.30 P. M., a preamble and resolutions were adopted to the effect that the bank could not safely continue business or offer a reasonable security to those who dealt with it, and it was expedient that the bank be dissolved and its business affairs be wound up, and the officers of the bank were authorized to take advice of the Bank Superintendent upon the best mode of effecting such dissolution, and empowered to take all such steps in the matter as they might find for the best interest of the bank and its depositors, and any new moneys thereafter received on deposit should be kept separate and in trust for those making such deposits.

That on the following day, being September 29, 1875, the officers of said bank appeared before said Ellis with such preamble and resolutions, together with a summons, complaint and papers, on application for the appointment of a receiver, in which complaint it was stated that the bank then was and for more than a year past had been insolvent, and unable to pay its debts, and that the liabilities of the bank to depositors had been and were very much greater than, and far in excess of the value of all the assets of said bank; and said complaint was signed by the Attorney-General and verified by affidavit of said Ellis, in which he stated that he was familiar with the facts set forth in the complaint.

That, upon said complaint, a receiver of the bank was appointed on that day.

*Specification Third.* — That said Ellis, on the 29th day of September, 1875, assented to the appointment of William S. Carman as receiver of said bank.

That said Carman was present at the time and was so appointed with the knowledge of said Ellis; that said Carman then was the secretary of said bank, and was such secretary January 1, 1875, and as such secretary made and signed said false report as of January 1, 1875, above mentioned, and verified the same by his oath January 23, 1875.

That said Carman was a grossly unfit and improper person to be appointed such receiver, and said Ellis had knowledge and notice thereof and neglected and violated his duty as superintendent by assenting to and not opposing such appointment.

That said Carman was removed from his office of receiver on the petition of divers creditors of said bank, by an order of Hon. Theodorick R. Westbrook, justice of the Supreme Court, dated November 13, 1875.

*Specification Fourth.* — That, after said examination of March 22 and 23, 1875, and while said superintendent had notice of the insolvency of said bank, the said bank received deposits from 719 different depositors, amounting to \$316,079.81, and paid at par to previous depositors a very large amount, and that at the time of the appointment of said Carman as receiver said bank had cash on hand to the amount of only about \$7,000, and during the same period, and in or about the month of July, 1875, said bank declared a dividend to its depositors while [so insolvent, and that great loss and damage happened thereby to such depositors by means of the neglect of said Ellis to perform his duties as superintendent.

*Specification Fifth.* — That said Ellis, from April 14, 1873, to March 22, 1875, neglected his duty, in person or by one or more competent persons by him appointed, to visit and thoroughly examine the affairs and transactions of said bank, when he had during all that time reason to believe that said savings bank was loaning and investing money in violation of its charter and of law, and was conducting business in an unsafe manner.

*Specification Sixth.* — That said Ellis, neglected his duty in that he did not at any time on or after April 14, 1873, by an order under his hand and seal of office, addressed to said savings bank, direct a discontinuance of the illegal and unsafe practices of said bank, and a conformity with the requirements of its charter and of law, and with safety and security in its transactions, when he had, during all that time, notice that said savings bank had been and was guilty of violations of its charter and of law, and was conducting business in an unsafe manner.

*Specification Seventh.* — That said Ellis, from April 14, 1873, to March 23, 1875, neglected his duty to communicate to the Attorney-General the fact that it appeared to the superintendent that it was unsafe and inexpedient for said savings bank to continue to transact business, when it did so appear to said Ellis during all that time.

*Specification Eighth.* — That said Ellis, from March 23, 1875, to September 29, 1875, neglected his duty to communicate to the Attorney-General the fact that it appeared to the superintendent that it was unsafe and inexpedient for said savings bank to continue to transact business, when it did so appear to said Ellis during all that time.

## SECOND CHARGE.

That said De Witt C. Ellis, Superintendent of the Bank Department, neglected and failed to perform his duty as such superintendent in respect of the Trades' Savings Bank of the city of New York, as follows:

*Specification First.* — That said Trades' Savings Bank made its report to the Bank Superintendent in January, 1875, as of the first day of that month, stating its assets at \$106,584.43, and the excess of its assets over its liabilities at \$1,933.69, and showing as part of said assets, furniture and fixtures \$7,148.96.

Said savings bank was then insolvent. In November, 1875, the bank was examined by direction of the superintendent, and the report of the examination was received by him December 2, 1875, by which report it appeared that the assets of the bank were less than its liabilities by \$6,538.29.

On the 25th December, 1875, said Ellis wrote to the president of said savings bank, to the effect that the examination of the bank showed a deficiency of assets with which to meet its liabilities; that the settled policy of the department was to close up all such banks, unless the deficiency was made good at once and calling the president's attention to the matter, with the hope that he would be able to put the bank on sound footing before the first of January; and that subsequently said Ellis telegraphed to the officers of the bank on the subject, in reply to which the secretary of the bank, on the 31st of December, 1875, telegraphed to said Ellis as follows:

"Telegram received. Every thing fixed up as proposed."

In fact said telegram was untrue, the deficiency had not been supplied, and said Ellis was informed thereof within one week of said telegram. That, on the 13th of January, 1876, said bank was examined by direction of said Ellis, and the report therein made indicated a surplus of assets of \$2,432.34.

In fact such apparent surplus had been produced by false and fictitious entries and a pretended sale of real estate on Beach street, to one Mulvaney. Said real estate, by the books of bank, cost \$20,000 and said pretended sale was for about \$28,000 — \$7,250 cash and the balance on bond and mortgage; and said cash nowhere appeared on the books of the bank, of all which said Ellis had notice immediately after said report of January 13, 1876. That, on the 19th of January, 1876, the bank was insolvent. There was a clear deficiency of assets to meet its liabilities and said Ellis was informed thereof, and that the statement of said bank of the deficiency being made up was false, and said Ellis was informed thereof. That the officers of said bank, early in January, 1876, stated to the examiner of said Ellis that the deficiency had been made up, that \$7,000 in cash had been paid in and every thing was all right, and added that the entries in said book had not been made, but would be in a few days, and also stated that for the same reason said officers of said bank refused to permit said examiner to see what made up an item of \$10,000 cash in the daily statement, and said Ellis had notice thereof shortly afterwards in the same month of January, 1876, the entries in the books of the bank newly written were not clear, nor satisfactory to convince said examiner of the genuineness of the transaction, of all which said Ellis immediately had notice.

The board of trustees of said bank met about January 1, 1876, a quorum being present, and declared a dividend of six per centum and confirmed the pretended sale of the Beach street property, and afterward on the 4th of January, 1876, the secretary of said bank stated to said examiner that there had been no such meeting, and subsequently, on the 13th January, 1876, said examiner discovered in the bank a memorandum of said meeting, and said secretary then admitted that such meeting was had. Said dividend was declared when said bank was insolvent.

Of all which said matters said Ellis, immediately thereafter, had notice. Said bank remained insolvent and continued to receive deposits, and to advertise for depositors, without further examination, until August 9, 1876.

That during all the times, above in this specification mentioned, said savings bank was insolvent, and while so insolvent continued its business of receiving deposits and loaning and investing money in violation of its charter and of law, and conducted business in an unsafe manner, and its assets were insufficient to pay its depositors in full, and it was unsafe and illegal for it to receive deposits while in that condition; and said Ellis was informed and had reason to believe that said bank was so insolvent, and was so conducting business in an unsafe manner, and said Ellis neglected his duty of visiting and of thoroughly exam-

ining the affairs and transactions of said bank in person, or by one or more competent persons appointed for that purpose.

Said bank was closed by the appointment of a receiver on application of the Attorney-General August 26, 1876, and then was so largely insolvent that nothing has been paid to depositors, and they have made nearly or quite a total loss of their deposits.

*Specification Second.*—That, by the reports and examinations above mentioned, it appeared to said Ellis, on and at all times after December 2, 1875, that said bank had committed violations of its charter and of law, and was conducting its business and affairs in an unsafe and unauthorized manner, and yet he did not, by any order under his hand and seal, direct the discontinuance of such illegal, unsafe and unauthorized practices, and strict conformity with the requirements of the law and with safety and security in its transactions.

*Specification Third.*—That, by the reports and examinations above mentioned, it appeared to said Ellis on or about January 6, 1876, that said bank had committed violations of its charter and of law, and was conducting its business and affairs in an unsafe and unauthorized manner, and yet he did not, by any order under his hand and seal, direct the discontinuance of such illegal, unsafe and unauthorized practices, and strict conformity with the requirements of the law and with safety and security in its transactions.

*Specification Fourth.*—That it did appear to said Ellis in December, 1875, and at all times afterwards, that it was unsafe and inexpedient for said bank to continue to transact business, and he neglected and omitted to communicate the facts to the Attorney-General to whom, in like cases, it pertains to institute such proceedings as the nature of the case may require.

*Specification Fifth.*—That it did appear to said Ellis in January, 1876, and at all times afterwards, that it was unsafe and inexpedient for said bank to continue to transact business, and he neglected and omitted to communicate the facts to the Attorney-General, to whom, in like cases, it pertains to institute such proceedings as the nature of the case may require.

### THIRD CHARGE.

That said DeWitt C. Ellis Superintendent of the Bank Department, neglected and failed to perform his duty as such Superintendent in respect of the People's Saving Bank of the city of New York, as follows:

*Specification First.*—That said Ellis caused said savings bank to be examined by examiners, September 28, 1873, who then reported the bank insolvent, its assets being insufficient to meet its liabilities, by

the estimation of one of the examiners at \$28,198.50; and the other at about \$36,000. Said bank was then insolvent, and continued so at all times thereafter, and at the time of said examination; and at all times thereafter, said bank, while being so insolvent, continued its business of receiving deposits and loaning and investing money, in violation of its charter and of law, and conducted business in an unsafe manner; and its assets were largely insufficient to pay its depositors in full, and it was unsafe and illegal for it to receive deposits while in that condition.

That said Ellis during all that time was informed, and had reason to believe that said savings bank was so insolvent and so conducting business in an unsafe manner, and it was the duty of said Ellis, in person, or by one or more competent persons appointed by him, to visit and thoroughly examine the affairs and transactions of said bank, and said Ellis wholly neglected and failed until October 25, 1875, when he ordered an examination which afterwards was made November 10, 1875.

By the report of the last-named examination it appeared that the bank was insolvent, and its assets were insufficient to meet its liabilities, by the sum of \$42,779.96, and that there was a deficiency of \$10,919.04, and that said report was accompanied by a statement by examiner that the assets showed only forty-nine per cent on the amount due the depositors. That there also were trustees' bonds for about twenty-nine per cent more. That if the assets, including the trustees's bonds were good, there was a deficiency of twenty-five or thirty per cent. And that the expense of conducting the business were more than the whole income, leaving nothing to pay interest to depositors.

*Specification Second.*—That by the reports and examinations above mentioned it appeared to said Ellis on and at all times, after September 28, 1873, that said bank had committed violations of its charter and of law, and was conducting its business and affairs in an unsafe and unauthorized manner, and yet he did not, by any order under his hand and seal, direct the discontinuance of said illegal, unsafe and unauthorized practices and strict conformity with the requirements of the law and with safety and security in its transactions.

*Specification Third.*—That it did appear to said Ellis, in September, 1873, and at all times afterwards, that it was unsafe and inexpedient for said bank to continue to transact business, and he neglected and omitted to communicate the facts to the Attorney-General, to whom, in like cases, it pertains to institute such proceedings as the nature of the case may require.



## FOURTH CHARGE.

That said De Witt C. Ellis, Superintendent of the Bank Department, neglected and failed to perform his duty as such superintendent, in respect to the Mechanics and Traders' Savings Bank of the city of New York, as follows:

*Specification First.*—That said bank was examined by examiners appointed by said Ellis on or about October 5, 1874, and they reported that its assets were less than its liabilities, the deficiency being \$24,981.90, and also that there was a deficiency of annual income amounting to \$14,191.82.

Said bank made its annual report as of January 1, 1876, showing a deficiency of \$5,628.31, and including in its assets suspense account \$39,127.07.

Said report was received by said Ellis in the latter part of January, 1876, and the same was examined by the examiners, who ascertained that there was a great overvaluation of the assets in said report, and that the real deficiency was \$28,000 or thereabouts, and they so informed said Ellis.

That on March 7, 1876, said bank was examined by the examiners of said Ellis, who reported to said Ellis, March 16, 1876, that the deficiency of assets was \$91,898.39, with a probable further deficiency of about \$70,000, and a deficiency of annual income of \$30,548.18.

Said deficiency continued and increased thereafter, and was known to said Ellis and was brought especially to his attention from time to time.

Said bank at all times, after October 5, 1874, was insolvent, and at all times since October 5, 1874, said bank, while being so insolvent continued its business of receiving deposits and loaning and investing money, in violation of its charter and of law, and conducting business in an unsafe manner, and its assets were largely insufficient to pay its depositors in full, and it was unsafe and illegal for it to receive deposits while in that condition.

That said Ellis, during all that time, was informed and had reason to believe that said bank was insolvent, and so conducting business in an unsafe manner; and it was the duty of said Ellis, in person or by one or more competent persons, appointed by him, to visit and thoroughly examine the affairs and transactions of said bank; and said Ellis wholly neglected and failed to perform said duty.

Said bank was closed by the appointment of a receiver, June 1, 1876, and its assets were then found to be insufficient to meet its liabilities by about \$300,000.

*Specification Second.*—That by the reports, examinations and information above mentioned, it appeared to said Ellis, at all times on and

after October 5, 1874, that said bank had committed violations of its charter and of law, and was conducting its business and affairs in an unsafe and unauthorized manner, and yet he did not by any order, under his hand and seal, direct the discontinuance of such illegal, unsafe and unauthorized practices, and strict conformity with the requirements of the law and with safety and security in its transactions.

*Specification Third.*—That by the reports, examinations and information above mentioned it appeared to said Ellis at all times during and after the months of January, February or March, 1876, that said bank had committed violations of its charter and of law and was conducting its business and affairs in an unsafe and unauthorized manner, and yet he did not by any order under his hand and seal direct the discontinuance of such illegal, unsafe and unauthorized practices and strict conformity with the requirements of the law and with safety and security in its transactions.

*Specification Fourth.*—That it did appear to said Ellis on October 5, 1874, and at all times afterwards, that it was unsafe and inexpedient for said bank to continue transacting business, and he neglected to communicate the facts to the Attorney-General, to whom in like cases it pertains to institute such proceedings as the nature of the case may require, until June 1, 1876.

*Specification Fifth.*—That it did appear to said Ellis, during the months of January, February or March, 1876, and at all times thereafter, that it was unsafe and inexpedient for said bank to continue transacting business, and he neglected to communicate the facts to the Attorney-General, to whom, in like cases, it pertains to institute such proceedings as the nature of the case may require, until June 1, 1876.

#### FIFTH CHARGE.

That said De Witt C. Ellis, Superintendent of the Bank Department, neglected and failed to perform his duty as such superintendent, in respect to the Abingdon Square Savings Bank of the city of New York, as follows :

*Specification First.*—That said bank was examined by examiners appointed by said Ellis, on December 1 and 2, 1873, and they reported that its assets were less than its liabilities, by the sum of \$1,507.23, and there was a deficiency of annual income of \$1,802.70.

Said bank made its annual report as of January 1, 1874, claiming its assets to be \$171,279.19, and the same to be an excess of its liabilities to \$3,056.08, and also showing in its assets, furniture and fixtures, \$4,252.72.

Said bank also made its annual report as of January 1, 1875, claiming its assets to be \$179,753.52, and to be in excess of its liabilities

\$3,687.25, but showing in its assets, furniture and fixtures, \$4,316.32.

Said bank was examined by an examiner appointed by said Ellis, who, November 4, 1875, reported an excess of assets over liabilities amounting to \$4,424.70, and a deficiency of annual income \$664.60, and the examiner stated in a note annexed to his report that the officers had recently exchanged real estate bid in on foreclosure in Brooklyn for other property there, which had been sold at a profit, purchase-money mortgages being taken in payment; the lots having been built on; the transaction being done apparently in good faith, but in violation of its charter, and that the apparent surplus was \$4,424; that to increase the security to depositors the trustees had given their notes for \$10,000.

That, subsequently, on or about July 6, 1876, said bank was examined by an examiner of said Ellis, who found a deficiency of assets to meet its liabilities, amounting to \$6,783.97, in addition to a probable increase for accrued interest, and said Ellis was informed thereof.

That subsequently, and on or about July 19, 1876, said bank was examined by an examiner of said Ellis, who found a deficiency of \$7,000, and that said Ellis was informed thereof.

Said bank at all times after December 1, 1873, was insolvent, and at all times after December 1, 1873, said bank continued its business of receiving deposits and loaning and investing money, in violation of its charter and of law, and conducting business in an unsafe manner, and its assets were largely insufficient to pay its depositors in full, and it was unsafe and illegal for it to receive deposits while in that condition. That said Ellis, during all that time was informed and had reason to believe, that said bank was so insolvent and so conducting business in an unsafe manner, and it was the duty of said Ellis, in person or by one or more competent persons appointed by him, to visit and thoroughly examine the affairs and transactions of said bank, and said Ellis wholly neglected and failed to perform said duty.

Said bank was closed by the appointment of a receiver on application dated August 10, 1876, and its assets were then found to be insufficient to pay its liabilities by so large an amount that the depositors will receive only about thirty per cent of their dues.

*Specification Second.*—That by the reports, examinations and information above mentioned, it appeared to said Ellis at all times on and after December 2, 1873, that said bank had committed violations of its charter and of law, and was conducting its business and affairs in an unsafe and unauthorized manner, and yet he did not, by any order under his hand and seal of office addressed to said bank, direct the discontinuance of such illegal, unsafe and unauthorized practice and

strict conformity with the requirements of the law and security in its transactions.

*Specification Third.*—That by the reports, examinations and information above mentioned, it appeared to said Ellis at all times on and after July 6, 1876, that said bank had committed violations of its charter and of law, and was conducting its business and affairs in an unsafe and unauthorized manner, and yet he did not by any order under his hand and seal of office addressed to said bank direct the discontinuance of such illegal, unsafe and unauthorized practices and strict conformity with the requirements of the law and security in its transactions.

*Specification Fourth.*—That it did appear to said Ellis, on the 2d day of December, 1873, and at all times afterwards that it was unsafe and inexpedient for said bank to continue transacting business, and he neglected to communicate the fact to the Attorney-General, to whom, in like cases, it pertains to institute such proceedings as the nature of the case may require, until August 10, 1876.

*Specification Fifth.*—That it did appear to said Ellis, on the 6th day of July, 1876, and at all times afterwards, that it was unsafe and inexpedient for said bank to continue doing business, and he neglected to communicate the facts to the Attorney-General, to whom, in like cases, it pertained to institute such proceedings as the nature of the case may require, until August 10, 1876.

#### SIXTH CHARGE.

That said De Witt C. Ellis, Superintendent of the Bank Department neglected and failed to perform his duty as such superintendent, in respect of the Bond Street Savings Bank of the city of New York, as follows :

*Specification First.*—That said bank was examined by the examiners of said Ellis, March 25, 1875, and was found to have in its assets the following, to wit : bonds on which the interest was suspended, amounting to \$65,100, of which \$43,500 were New Jersey town bonds, also its old banking-house, valued at \$65,000, and its new banking-house at its cost, \$220,226.86.

There was an apparent surplus of assets amounting to \$145,731.05 and there was a deficiency of income amounting to \$20,499.28. The lot on which said new banking-house was built was purchased by the bank of Robert Drew, then one of its trustees, for the sum of \$7,000, or thereabouts, and such purchase of a trustee was illegal. Said bank also held mortgages on Brooklyn real estate, purchased of one of the trustees of said bank, which mortgages were not well secured, and also had an investment in Chicago property which was illegal, and these last two items involved a loss to the bank of \$250,000.

That said Ellis thereupon had reason to believe that said bank was loaning or investing money in violation of its charter and of law, and was conducting business in an unsafe manner, and it was his duty either in person or by one or more competent persons by him appointed to visit and thoroughly examine the affairs and transactions of said bank, which duty he wholly neglected and failed to perform.

Said bank was closed by the appointment of a receiver on the request of the trustees on or about September 20, 1876, and the said bank was closed with a very large loss, the receiver having paid the depositors fifty-five per cent, and having on hand unsalable real estate.

*Specification Second.* — That by said reports, examinations and information it appeared to said Ellis at all times on and after March 25, 1875, that said bank had committed violations of its charter and of law, and was conducting its business and affairs in an unsafe and unauthorized manner, and yet he did not by any order under his hand and seal of office addressed to said bank, direct the discontinuance of such illegal, unsafe and unauthorized practices and strict conformity with the requirements of the law, and with safety and security in its transactions.

*Specification Third.* — That it did appear to said Ellis on March 25, 1875, and at all times afterwards, that it was unsafe and inexpedient for said bank to continue to transact business and he neglected until September 20, 1876, to communicate the facts to the Attorney-General, to whom in like cases it pertains to institute such proceedings as the nature of the case may require.

#### SEVENTH CHARGE.

That said De Witt C. Ellis, Superintendent of the Bank Department, neglected and failed to perform his duty as such Superintendent in respect of the Loaners' Bank of the city of New York, as follows:

*Specification First.* — That said Loaners' Bank was incorporated by charter of April 27, 1868, as the Pawnors' Bank, and its name was afterwards changed, by the act of 1869, to the Loaners' Bank.

By its charter it was to be governed by the rules and provisions established by law relative to banks.

That said Loaners' Bank never made any report to said Ellis. The attention of said Ellis was called to the fact that it had made no report, and he was requested to require it to report, and he was also informed that it was in an unsafe and insecure condition, and was requested to examine its affairs.

That said Ellis never caused said bank to be examined.

Said bank failed and went into the hands of a receiver in May, 1867, and was found to be wholly insolvent.

The operations of said bank were notoriously disreputable, its standing bad, and its operations improper and illegal ; and its failure caused a loss to the public of about \$500,000.

#### EIGHTH CHARGE.

That said De Witt C. Ellis, Superintendent of the Bank Department, neglected and failed to perform his duty as such Superintendent, in respect of the Security Bank of the city of New York as follows:

*Specification First.* — That said Security Bank was a banking association, organized under the general banking laws of this State, with a capital of \$500,000.

That in the autumn of 1873, or thereabouts, the capital of said bank had been greatly impaired, and its affairs were in an unsafe condition, and notice thereof was given to said Ellis and he was requested to examine into its affairs, but he neglected so to do. Said bank afterwards, in or about April, 1874, suspended business, with a loss of about three-fourths of its capital. A large portion of which loss would have been saved if said Ellis had performed his duty.

#### NINTH CHARGE.

That said De Witt C. Ellis, Superintendent of the Bank Department, neglected and failed to perform his duty as such superintendent in respect of the New York Loan and Trust Company of the city of New York, as follows:

*Specification First.* — Said company was subject to the supervision of the Bank Department by the law of 1874.

Its charter was enacted in May, 1870. That said Ellis was informed by his examiners in or about March, 1875, that the capital stock of said bank was largely impaired and was in an unsafe condition ; that said Ellis neglected to take any proceedings against said company, and it failed and went into the hands of a receiver, in or about January 29, 1876, with a loss of eighty per cent of its capital stock.

Said company was examined by the examiners of said Ellis, February 5th and 6th, 1875, and they reported that one-fourth of the capital stock was lost.

#### TENTH CHARGE.

That said De Witt C. Ellis, during all the period since he was appointed Superintendent of the Banking Department, has been negligent and inefficient in the performance of his duties in relation to

savings banks, and by his negligence and inefficiency, irregular, illegal and improvident transactions and practices have largely prevailed among savings banks, and losses thereby have happened to many thousands of depositors, to a large aggregate amount, and general confidence in savings banks among the classes of persons most interested in their use and security has been greatly impaired, and he has shown himself to be, and is, an unfit and unsuitable person longer to hold and exercise said office, and it will be for the public safety and the public good that he be removed therefrom.

TRACY, OLMSTEAD & TRACY,

*Counsel for the State.*

Mr. Vedder moved that the reading of the formulated charges be dispensed with; that the same be referred to the committee on the judiciary, and that a copy thereof be served upon the counsel for the respondent.

Mr. Robertson moved to amend the motion by striking out the words "reading of the formulated charges be dispensed with."

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

The President then put the question whether the Senate would agree to said motion as amended, and it was decided in the affirmative.

FOR THE AFFIRMATIVE.

Baaden	Jacobs	Selkreg
Bixby	Kennaday	Starbuck
Bradley	Lamont	Tobey
Carpenter	McCarthy	Vedder
Cole	Moore	Wagner
Coleman	Prince	Wagstaff
Emerson	Robertson	Wellman
Gerard	Sayre	Woodin
Harris		

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Mr. Bradley moved that so much of Rule II as is contained in the words "At its first meeting the charges against the accused and his answer thereto shall be read by the Clerk," be suspended.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

The Clerk, by direction of the President, called the name of De Witt C. Ellis, who responded in person and by his counsel, Messrs. Orlow F. Chapman and Jeremiah McGuire.

Mr. McGuire, of counsel for respondent, interposed a general denial as an answer to the charges made by the Governor, and requested further time in which to prepare an answer to the formulated charges presented by the counsel for the prosecution.

Mr. Kennaday moved that the counsel for the respondent be granted until to-morrow morning to put in an answer to the formulated charges.

After debate,

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

#### FOR THE AFFIRMATIVE.

Baaden	Jacobs	Schoonmaker
Bixby	Kennaday	Starbuck
Bradley	Lamont	Tobey
Cole	Prince	Vedder
Emerson	St. John	Wagstaff
Hammond		

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#### FOR THE NEGATIVE.

Carpenter	McCarthy	Sprague
Coleman	Moore	Vedder
Doolittle	Robertson	Wellman
Gerard	Sayre	Woodin
Harris	Selkreg	

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Mr. Wagstaff moved that the Senate do now adjourn until to-morrow morning at 11 o'clock.

The President put the question whether the Senate would agree to said motion, and it was decided in the negative.

Mr. Prince moved that Rule VII be amended so as to read as follows : "The final vote of the Senate upon the charges preferred shall be taken as follows : The President shall put the question, ' Shall De Witt C. Ellis be removed from the office of Superintendent of the Bank Department ? ' The question shall be taken by ayes and noes, which shall be entered upon the journal. The final judgment of the Senate shall be certified to the Governor by the President and Clerk of the Senate."

*Ordered*, That said motion be laid on the table.

Mr. Harris moved to reconsider the vote by which the resolution directing the counsel for the State to prepare formulated charges against De Witt C. Ellis, Superintendent of the Bank Department, was adopted.

After debate,

Mr. Schoonmaker moved to lay the motion on the table.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.



Mr. Jacobs offered the following :

*Resolved*, That at future sessions of the Senate, the front row of seats in the auditorium be reserved for ladies and gentlemen accompanying them.

The President put the question whether the Senate would agree to said resolution, and it was decided in the affirmative.

Mr. Schoonmaker moved that all the papers transmitted to the Senate by the Governor in the matter of the charges against De Witt C. Ellis, Superintendent of the Bank Department be printed and placed on the files of Senators by to-morrow morning.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Mr. Wagstaff moved that the Senate do now adjourn until to-morrow morning at 11 o'clock.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Whereupon the Senate adjourned.

SARATOGA SPRINGS, FRIDAY, *July 20, 1877.*

The Senate met pursuant to adjournment.

The Clerk called the roll, when the following Senators answered to their names :

Baaden	Harris	Sayre
Bixby	Jacobs	Schoonmaker
Bradley	Kennaday	Selkreg
Carpenter	Lamont	Sprague
Cole	Loomis	Starbuck
Coleman	McCarthy	Tobey
Doolittle	Moore	Vedder
Emerson	Prince	Wagner.
Gerard	Robertson	Wellman
Hammond	St. John	Woodin

On motion of Mr. Robertson, the reading of the journal was dispensed with.

Mr. Jacobs offered the following :

*Resolved*, That the Lieutenant-Governor and the Clerk designate a person to act as superintendent of documents.

Mr. Woodin moved that the resolution be laid upon the table.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

FOR THE AFFIRMATIVE.

Bradley	Kennaday	St. John
Carpenter	Lamont	Sayre
Cole	Loomis	Selkreg
Coleman	McCarthy	Sprague
Doolittle	Moore	Vedder
Emerson	Prince	Wellman
Gerard	Robertson	Woodin
Hammond		

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FOR THE NEGATIVE.

Baaden	Jacobs	Starbuck
Harris	Schoonmaker	Wagner

6

Mr. Prince called for the consideration of the resolution to amend Rule VII, in the words following:

Rule VII. The final vote of the Senate upon the charges preferred shall be taken as follows: The President shall put the question, "Shall De Witt C. Ellis be removed from the office of Superintendent of the Bank Department?" The question shall be taken by ayes and noes, which shall be entered upon the journal. The final judgment of the Senate shall be certified to the Governor by the President and Clerk of the Senate.

Mr. Schoonmaker moved to lay said motion to amend upon the table.

The President put the question whether the Senate would agree to said motion, and it was decided in the negative.

FOR THE AFFIRMATIVE.

Bixby	Jacobs	St. John
Bradley	Kennaday	Schoonmaker
Coleman	Lamont	Starbuck
Gerard	Loomis	Tobey
Hammond	Robertson	

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FOR THE NEGATIVE.

Baaden	McCarthy	Sprague
Carpenter	Moore	Vedder
Cole	Prince	Wagner
Doolittle	Sayer	Wellman
Emerson	Selkreg	Woodin
Harris		

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Mr. Sprague moved to amend the resolution so that said Rule VII shall read as follows:

*Resolved*, That upon the closing of the proofs upon this hearing each Senator shall be required to answer affirmative or negatively the two following questions:

*First*. Was the respondent guilty of culpable negligence in the performance of his official duty as Superintendent of the Bank Department in regard to any of the banks, and in any of the respects mentioned in the charges contained in and accompanying and referred to by the messages transmitted by his Excellency the Governor to the Senate, bearing date the 5th and the 23d days of April, 1877.

*Second*. Shall the Superintendent of the Bank Department be removed from his office?

The President put the question whether the Senate would agree to said resolution, and it was decided in the affirmative.

Mr. Schoonmaker, to further amend the amendment by striking out the first interrogatory and inserting the following:

“Are any of the charges against De Witt C. Ellis, Superintendent of the Bank Department, transmitted to the Senate by his Excellency the Governor, in respect to the Savings Bank, sustained by the proof?”

The President put the question whether the Senate would agree to said motion, and it was decided in the negative.

#### FOR THE AFFIRMATIVE.

Bixby	Jacobs	Schoonmaker
Bradley	Robertson	Starbuck
Gerard	St. John	

8

#### FOR THE NEGATIVE.

Baaden	Harris	Selkreg
Carpenter	Kennaday	Sprague
Cole	McCarthy	Vedder
Coleman	Moore	Wagner
Doolittle	Prince	Wellman
Emerson	Sayre	Woodin

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Mr. Schoonmaker moved to amend by striking out the words “culpable negligence” and inserting the words “neglect of duty.”

The President put the question whether the Senate would agree to said motion, and it was decided in the negative.

The President then put the question whether the Senate would agree to said original motion as amended, and it was decided in the affirmative.

## FOR THE AFFIRMATIVE.

Baden	Harris	Sprague	
Carpenter	McCarthy	Vedder	
Cole	Moore	Wagner	
Coleman	Prince	Wellman	
Doolittle	Sayre	Woodin	
Emerson	Selkreg		17

## FOR THE NEGATIVE.

Bixby	Kennaday	St. John	
Bradley	Lamont	Schoonmaker	
Gerard	Robertson	Starbuck	
Jacobs			10

Mr. Robertson moved that all further proceedings required under the resolution providing for the preparation of the formulated charges by the counsel for the prosecution be suspended indefinitely.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

## FOR THE AFFIRMATIVE.

Bradley	McCarthy	Starbuck	
Carpenter	Moore	Tobey	
Cole	Robertson	Vedder	
Coleman	Sayre	Wagner	
Gerard	Schoonmaker	Wellman	
Harris	Sprague	Woodin	
Lamont			19

## FOR THE NEGATIVE.

Baaden	Emerson	Prince	
Bixby	Jacobs	St. John	
Doolittle	Kennaday	Selkreg	9

On motion of Mr. Schoonmaker, the Senate took a recess until 4 o'clock P. M.

## FOUR O'CLOCK P. M.

The Senate again met.

Mr. Bixby moved that when the Senate adjourn to-day it adjourn to meet on Monday morning next.

Mr. McCarthy moved to amend by striking out the words "Monday morning next" and inserting the words "to-morrow at 9 o'clock A. M."

Mr. Starbuck moved to amend the amendment by striking out the words "9 o'clock" and inserting the words "10 o'clock."

The President put the question whether the Senate would agree to said motion of Mr. Starbuck, and it was decided in the affirmative.

FOR THE AFFIRMATIVE.

Bradley	Kennaday	Sayre
Cole	Moore	Schoonmaker
Coleman	Prince	Starbuck
Emerson	St. John	Vedder
Jacobs		

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FOR THE NEGATIVE.

Baaden	Lamont	Sprague
Bixby	McCarthy	Wellman
Carpenter	Robertson	Woodin
Harris		

10

The President then put the question on the amendment of Mr. McCarthy, as amended, and it was decided in the affirmative.

The President then put the question on the original resolution of Mr. Bixby, as amended, and it was decided in the affirmative.

Mr. Bixby moved that S. H. Hurd, a witness summoned to appear on Saturday, be excused from attendance until Tuesday.

The President put the question whether the Senate would agree to said motion, and it was decided in the negative.

The President voting in the negative.

Mr. Jacobs moved that the Senate do now adjourn.

The President put the question whether the Senate would agree to said motion, and it was decided in the negative.

FOR THE AFFIRMATIVE.

Baaden	Jacobs	Schoonmaker
Bixby	Kennaday	

5

FOR THE NEGATIVE.

Bradley	McCarthy	Sayre
Carpenter	Moore	Sprague
Coleman	Prince	Starbuck
Gerard	Robertson	Wellman
Harris	St. John	Woodin
Lamont		

16

Mr. Gerard moved that Rule IV be amended by striking out the concluding words "unless a Senator shall desire to debate the same."

*Ordered*, That said motion be laid on the table.

On motion of Mr. Starbuck, and by unanimous consent, Rule IV was amended by inserting after the words "and if he" in the third line, the words "or any Senator."

Mr. Jacobs moved that the Senate do now adjourn.

The President put the question whether the Senate would agree to said motion, and it was decided in the negative.

Mr. Starbuck moved that the counsel for the prosecution be requested to proceed and open the case on the part of the State.

Mr. Schoonmaker objecting,

The President decided that the motion could not be entertained without unanimous consent of the Senate.

Subsequently, Messrs. McCarthy and Woodin respectively renewed the motion, and the same were objected to, the President ruling as before.

Mr. Tobey moved that the Senate do now adjourn.

The President put the question whether the Senate would agree to said motion, and it was decided in the negative.

#### FOR THE AFFIRMATIVE.

Baaden	Robertson	Tobey
Bixby	Schoonmaker	Vedder
Carpenter		

7

#### FOR THE NEGATIVE.

Bradley	Lamont	Selkreg
Coleman	McCarthy	Sprague
Doolittle	Moore	Starbuck
Gerard	Prince	Wellman
Harris	St. John	Woodin
Kennady	Sayre	

17

Mr. Prince moved that Rule II be suspended.

Mr. Jacobs objecting,

The President decided the motion out of order under the rules.

Mr. Vedder moved that the Senate do now adjourn.

The President put the question whether the Senate would agree to said motion and it was decided in the affirmative.

SARATOGA SPRINGS, SATURDAY, *July 21, 1877.*

The Senate met pursuant to adjournment.

The Clerk called the roll, when the following Senators answered to their names :

Baaden	Kennaday	Schoonmaker
Bixby	Lamont	Selkreg
Bradley	Loomis	Sprague
Carpenter	McCarthy	Starbuck
Cole	Moore	Tobey
Coleman	Prince	Vedder
Emerson	Robertson	Wellman
Gerard	St. John	Woodin
Harris	Sayre	

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Present, also Messrs. Tracy, Olmstead and Tracy, of counsel for the State, and Messrs. Chapman and McGuire, of counsel for the respondent.

On motion of Mr. Robertson, the reading of the journal of yesterday was dispensed with.

Mr. Gerard called for the consideration of the motion to amend Rule IV by striking out the concluding words, "unless a Senator desire to debate the same."

Mr. Starbuck moved to amend by inserting in lieu of the words stricken out the words "unless a majority of the Senate shall otherwise order."

Mr. Gerard accepted the amendment.

Mr. Prince moved to amend so that the concluding paragraph of said rule shall read as follows : "In case of motions made by counsel on legal points, the decision shall be had without debate, unless a majority of the Senate shall otherwise order."

Mr. Gerard having accepted this amendment also,

The President put the question whether the Senate would agree to said motion to amend, and it was decided in the affirmative.

The Clerk then read the charges preferred by the Governor against De Witt C. Ellis, in the words following :

#### STATE OF NEW YORK :

EXECUTIVE CHAMBER, }  
ALBANY, *April 5, 1877.* }

*To the Senate :*

I have received from Mr. William J. Best, who was appointed by the Supreme Court, in July, 1876, receiver of the Mechanics and Traders' Savings Institution, charges against De Witt C. Ellis, Superintendent

of the Bank Department, accompanied by depositions and documentary proof in support thereof.

The charges are, that the bank was insolvent in July, 1874, the deficiency being then about \$200,000; that this condition of the bank was exposed to Mr. Ellis in September, 1874, by two of its trustees; that Mr. Ellis then personally investigated the affairs of the bank; that upon such examination he admitted the bank was insolvent; that he was frequently requested by and on behalf of the two trustees to take immediate proceedings to protect the creditors, and that he neglected to do so until June, 1876, a period of nearly two years.

In support of the charges are submitted:

1. A balance sheet (Schedule A) made out by George N. Pratt, who was at the time general book-keeper of the bank, and verified by his oath, showing a deficiency in July, 1874, of \$201,017.52.

2. The testimony of William Floyd and Ira W. Gregory, two of the trustees of the bank, contained in their depositions, that they, as a special committee, appointed in July, 1874, to examine its condition, reported a deficiency of assets, as compared with liabilities, of \$181,505.71, and a deficiency in annual income, if the usual dividend of interest to depositors were declared, of \$15,041.70. Schedules B and C, showing this condition of things, now appended to the charges, formed a part of their report. Mr. Floyd deposes, further, that the trustees having, notwithstanding their report, declared the usual dividend, he, through F. P. Bellamy, his attorney, in September, 1874, laid copies of the report of himself and Mr. Gregory, accompanied by the schedules above mentioned, before Mr. Ellis, and requested him to institute proceedings to protect the creditors; that thereupon Mr. Ellis went to New York, and in person examined the condition of the bank; that after such examination Mr. Ellis admitted to Floyd that the report of himself and Gregory was substantially correct, and that the bank was insolvent, and promised to take immediate measures to protect the depositors; that he (Floyd) frequently, between that time and June, 1876, urged Mr. Ellis to take some action in the matter, but that until the last-named date he neglected to do so.

3. The testimony of F. P. Bellamy, attorney at law of Brooklyn, contained in his deposition, to the same facts and to the same admissions to him by Mr. Ellis, after his personal examination of the condition of the bank, that it was insolvent, and that he, Bellamy, had on behalf of the two trustees above named, frequently urged Mr. Ellis, thereafter, to take action to protect the creditors, and had mailed several letters to Mr. Ellis to that effect, between the time of the examination aforesaid and June, 1876, but that Mr. Ellis neglected to take any proceedings until the last date.



4. The deposition of Mr. Gregory, to the effect that he confirms all that Mr. Floyd has stated concerning the acts and doings of Mr. Floyd and himself, and of Mr. Ellis.

The annual report of the bank department, dated March 5, 1875, exhibits this bank as possessing a surplus of assets over liabilities of \$67,240.18. (Assembly document, No. 108, p. 148.) That of 1876, exhibits the bank with a surplus of \$9,530.13. (See Assembly documents of 1876, No. 97, p. 157.)

Mr. Best alleges that at the time he was appointed receiver, in July, 1876, the deficiency had reached nearly \$350,000.

Upon these charges and the proofs in support of them, which I transmit to you herewith, it becomes my duty to recommend to you, as I now do, the removal from office of De Witt C. Ellis, Superintendent of the Bank Department.

This recommendation is made as a basis of action on the part of the Senate, and upon the assumption that the deposition annexed to the charges are true, and make out a *prima facie* case. It is due to Mr. Ellis to say, that upon my invitation he has appeared before me and made explanations which seem to acquit him of any intentional wrong, but not, in my judgment, of culpable negligence. I submit the whole matter to the Senate for such investigation and action as it may think proper for the protection of public interests.

L. ROBINSON.

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## SCHEDULE A.

STATEMENT OF MECHANICS AND TRADERS' SAVINGS INSTITUTION,  
July 1, 1874.

### *Liabilities.*

Amount due depositors, as shown on general ledgers,	\$2,565,252 83
Amount due depositors, dealers' ledgers, in excess of above, estimated.....	70,000 00
	<hr/>
	\$2,635,252 83
	<hr/>

\* No balance seems to have ever been taken off the dealers' or depositors' ledgers. When balanced by the receiver the dealers' ledgers showed that the institution owed its depositors more than \$80,000 in excess of the sum appearing in the general ledger; hence the addition made above, which is only approximately correct.

*Assets.*

	Par value.	Market value.
Bonds and mortgages.....	\$748,150	\$748,150 00
Stocks and bonds.....	1,852,600	1,436,357 00
Cash in safe and banks.....		102,009 12
Interest due but not collected.....		47,516 78
Banking-house, cost.....		65,725 00
No. 30, Pres't st., Brooklyn (est'd),.....		15,000 00
No. 32 Pres't st., Brooklyn (est'd).....		7,000 00
E. Goulard, judgment.....		5,004 48
Suspense accounts, nominal value, \$41,000, subsequently realized.....		1,872 93
Office Furniture, safe, etc.....		5,000 00
		<hr/>
		\$2,433,635 31
Deficiency .....		201,617 52
		<hr/>
		\$2,635,252 83
		<hr/>

CITY AND COUNTY OF NEW YORK, ss.:

Geo. N. Pratt, of the city and county of New York, being sworn, says,

That in July, 1874, and for some time previous and thereafter, he was general book-keeper of the Mechanics and Traders' Savings Institution of said city.

That he has examined the schedule hereto annexed, marked A, and that it includes all the assets of said institution at the time named.

GEO. N. PRATT.

Sworn to before me this 13th }  
day of October, 1876 }

CHAS. L. ADRIAN,

*Notary Public, New York city.*

MECHANICS AND TRADERS' SAVINGS INSTITUTION, }  
283 BOWERY, NEW YORK, *October 13, 1876.* }

SIR.—I have the honor to submit herewith, for your consideration certain documents, which appear to me of the greatest public importance.

In 1874 Messrs. Floyd and Gregory, two of the trustees of this institution, were appointed a special examining committee by the board of trustees. In the course of my investigations, the report of this committee came under my notice.

The details and figures furnished by this report are not critically correct, some items having been omitted, but the amount of the deficiency is very nearly exact. This appears by Schedule A, hereto annexed.

As the result of my investigations, I would state :

1. That the books of the institution furnished undoubted evidence that it was hopelessly insolvent in the summer of 1874. and for a considerable time previous.

2. That the special examining committee, referred to herein, reported the insolvency of the institution to the board of trustees at one of its regular meetings.

3. That no action was taken by the board of trustees to make good the deficiency or otherwise protect the interests of the depositors.

4. That soon afterward, as appears by the inclosed affidavits, the condition of the institution was laid before Hon. De Witt C. Ellis, then and now Superintendent of the Banking Department.

5. That at the request of the counsel of Messrs. Floyd and Gregory, the committee heretofore named, Superintendent Ellis came here and made a personal examination of the affairs of the institution, and, after such examination, freely admitted its insolvency, and promised to take such action in the premises as would protect interests of depositors.

6. That no such action was taken by Superintendent Ellis until about the beginning of June, 1876.

7. The total amount of the deficiency, of the date of my appointment as receiver, was nearly \$350,000, of which possibly half would have been saved to the depositors had Superintendent Ellis fulfilled his legal duty in 1874.

The failure of this and many similar institutions has entailed vast losses upon the working classes, and excited in their minds grave doubts as to the solvency of other savings banks generally. For these reasons, and in the clear discharge of my duty, I have thought it proper to bring to the notice of your Excellency the facts herein recited, with the proofs in substantiation of them, for such action as you may see fit to adopt.

I have the honor to remain,

Respectfully, your obedient servant,

WILLIAM J. BEST,

*Receiver.*

To his Excellency SAMUEL J. TILDEN,

*Governor of the State of New York.*

Counsel for the receiver offers in evidence the affidavits accompanying the communication to Gov. Tilden, and the schedule thereunto attached, in words and figures following:

CITY AND COUNTY OF NEW YORK, ss. .

William Floyd of the city of Brooklyn, county of Kings, being sworn, says:

That in or about the month of July, 1874, and for a considerable time before and after, he was a trustee of the Mechanics and Traders' Savings Institution of the city of New York.

That on the 13th day of July, 1874, deponent and one Ira W. Gregory, who was then also a trustee of said institution, were duly appointed by the board of trustees a special committee to examine and report upon the condition of the said Mechanics and Traders' Savings Institution.

That in pursuance of such appointment deponent and said Gregory entered upon the discharge of their duties as such special examining committee, and Schedules A, B and C, hereto annexed, are true copies of the report and accompanying schedules submitted to the board of trustees of said institution by deponent and said Gregory as such committee.

That at or about the time when such report was made and submitted, said board of trustees, notwithstanding the insolvency of said institution, which was alleged and set forth in the aforesaid report of deponent and said Gregory, resolved at a regular meeting to pay a dividend to the depositors for the six months ending July 1, 1874, although no dividend had been earned, and this deponent and said Gregory voted and protested against making or paying said dividends.

That in September, 1874, deponent, by his attorney, F. P. Bellamy, Esq., laid copies of said special report and accompanying schedules before the Hon. DeWitt C. Ellis, Superintendent of the Banking Department, and requested him to institute proceedings to secure the depositors and other creditors of said institution against further loss.

That, thereupon, said Ellis came to New York, and examined said institution, and informed deponent that the report of deponent and said Gregory, as to the condition of said institution, was substantially correct and that said institution was then clearly insolvent, and then and there promised deponent that immediate steps should be taken to protect its depositors.

Deponent further says that notwithstanding the aforesaid statement and promise of said Ellis to deponent, and notwithstanding the fact that deponent has frequently for nearly two years previous to June 1, 1876, by his attorney, F. P. Bellamy, requested said Ellis to take some action in the premises, said Ellis utterly failed and neglected to take

any substantial steps to protect the depositors of said institution until on or about June 1, 1876, when proceedings were finally instituted for the appointment of a receiver for said institution.

WM. FLOYD.

Sworn to before me this 12th }  
day of October, 1876. }

E. A. CARLEY,

*Notary Public, N. Y. Co.*

CITY AND COUNTY OF NEW YORK, ss. :

Ira W. Gregory, of the city of Brooklyn, county of Kings, being sworn says:

That he has heard the annexed affidavit of William Floyd read and knows the contents thereof, and that the statements therein contained in respect to the acts and doings of said Floyd, and this deponent and of De Witt C. Ellis, Superintendent of the Banking Department, are true, as stated in said affidavit.

I. W. GREGORY.

Sworn to before me this 12th }  
day of October, 1876. }

E. A. CARLEY,

*Notary Public, N. Y. Co.*

CITY OF BROOKLYN, COUNTY OF KINGS. ss. :

F. P. Bellamy, of the city of Brooklyn and county of Kings, being sworn says:

That he is an attorney at law; that in or about the month of September, 1874, at the request of William Floyd and Ira W. Gregory, two of the trustees of the Mechanics and Traders' Savings Institution of the city of New York, deponent went to the city of Albany, and there laid before Hon. De Witt C. Ellis, Superintendent of the Banking Department, reports and statements, sworn to by said Floyd and Gregory, purporting to show the insolvency of the said institution to the extent of \$100,000, or thereabouts; and requested said Ellis to take immediate steps to close said institution, or otherwise protect the depositors against further loss.

That said Ellis returned to New York with deponent, for the alleged purpose of making a full and thorough examination of said institution and its affairs.

That, after having made such examination, said Ellis admitted to deponent and others that said institution was insolvent, and that he the said Ellis, would immediately institute such measures as were necessary to protect the interests of the depositors in said institution.

That deponent subsequently wrote and mailed several letters to said

Ellis, urging him to immediate action in the premises; but said Ellis, as deponent is informed and believes, failed and neglected to do and perform this duty, and has not even replied to the communications of deponent.

F. P. BELLAMY.

Sworn before me this 13th }  
day of October, 1876. }

A. L. PECK,

*Notary Public Kings County.*

### SCHEDULE A.

The committee appointed to examine the financial condition of the institution, and also to ascertain the whole of the receipts and also the expenses for the six months commencing January 1 to July 1, 1874, would respectfully report that they have carefully examined and considered the same.

Your committee would here state that they most exceedingly regret to find the finances of the institution to be in the condition they are in.

They find the whole assets of the institution to be \$2,383,672.46 and the liabilities \$2,638,752.83,\* showing that the liabilities exceed the assets \$181,505,.71. (See Schedule A, attached to this report.)

Your committee find that the whole receipts of the institution from January the 1st to July the 1st, 1874, to be 75,739.07, and the expenses during the same time to be \$90,780.77, showing that the expenses exceed the receipts by \$75,041.70. (See Schedule B, attached.)

Your committee would, in view of the above facts, state that they may not be correct as to the very dollar and the cent, yet they feel very certain that they cannot be but very little out of the way.

Your committee would therefore respectfully urge upon the board, if it be advisable for the institution to continue business any longer at all, that a proper regard to economy renders it imperative that immediate steps should be taken to save every dollar that honor and justice could dictate to be done.

Your committee not wishing to be considered small by the board in the suggestions they may make, yet justice to the depositors and honor to themselves, demand that they should speak plain.

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\* Less liabilities, interest credited to depositors, \$73,574.66, error made on schedule A.

Your committee cannot refrain from saying that the secretary's report, every month, of the petty cash paid out for suppers for the board and committees, and for segars, etc., is all wrong, and they deem it equally important that not a dollar should be paid from the funds of the institution but what is legally right.

Your committee deem it to be highly necessary that the secretary should be more particular in itemizing his entries of expenses on his cash-book, so that every member could see at once what they are, without having to inquire for explanation. Your committee have found some little trouble in this respect.

Your committee would also urge that the secretary read his minutes of each session of the board prior to its adjournment, so that, if any errors, they could be corrected while fresh before the board; and they deem it proper, also, that the minutes should be written up on his book in a day or *two*, at least, after the session, so that if any one member be absent he can examine the same.

Your committee, in relation to salaries, in view of the above facts, do most strenuously urge the adoption of the following preamble and resolution:

*Whereas*, If it be advisable for the institution to continue its business, a large reduction of salaries should be made; therefore,

*Resolved*, That from the 1st day of August, 1874, the president's salary ; the salary of secretary, \$2,000; Mr. Pratt, \$1,600; Mr. Bennett, \$1,500; examining committee, \$600 to each.

J. W. GREGORY,

WM. FLOYD,

*Committee.*

## SCHEDULE B.

SECURITIES.	Par value.	Rate of interest. per ct.	Cost.	Market value.	Time.	Interest.
Bonds and mortgages.....	\$748,150 00	7	\$748,150 00	\$748,150 00	6 mos.	\$26,185 25
City Revenue bonds.....	275,000 00	7	275,000 00	275,000 00	6 mos.	9,625 00
City Revenue bonds.....	100,000 00	6	100,000 00	100,000 00	3 mos., 6 days.	1,600 00
Brooklyn Park bonds.....	240,000 00	7	241,575 00	240,000 00	6 mos.	8,400 00
Oswego City bonds.....	197,000 00	7	187,150 00	197,000 00	6 mos.	6,895 00
Buffalo City bonds.....	70,000 00	7	69,300 00	70,000 00	6 mos.	2,450 00
Buffalo City bonds.....	60,000 00	7	59,400 00	60,000 00	4½ mos.	1,575 00
Rochester City Water bonds.....	100,000 00	7	99,000 00	100,000 00	4½ mos.	2,625 00
Rochester City Water bonds.....	150,000 00	7	148,500 00	150,000 00	3 mos., 23 days.	3,295 80
Rochester City Water bonds.....	6,000 00	7	6,000 00	6,000 00	6 mos.	210 00
Westchester bonds.....	10,000 00	7	10,000 00	10,000 00	6 mos.	350 00
Yonkers bonds.....	21,000 00	7	20,580 00	21,000 00	6 mos.	735 00
Wallabout Improvement bonds...	17,000 00	7	17,000 00	17,000 00	6 mos.	595 00
Morrisania bonds.....	3,000 00	7	3,000 00	3,000 00	4½ mos.	78 75
Tennessee bonds.....	168,000 00	6	104,771 25	100,800 00	.....	5,040 00
South Carolina bonds.....	155,000 00	6	90,050 00	28,675 00	.....	.....
North Carolina bonds.....	114,600 00	6	74,550 00	20,628 00	.....	.....
Alabama bonds.....	166,000 00	8	157,700 00	66,400 00	.....	.....
	\$2,600,750 00			\$2,213,653 00		



Bank interest on deposit.....	.....	.....	.....	3,886 14
Interest received \$350,000, City Revenue bonds.....	.....	.....	15 days.	1,020 83
Interest received \$100,000, City Revenue bonds.....	.....	.....	1 month.	583 33
Interest received \$4,000, Yonkers bonds.....	.....	.....	1 month.	23 33
Interest received \$5,000, E. Goulard bonds.....	.....	.....	18 days.	17 26
Banking-house.....	65,725 00	65,725 00	.....	\$75,190 69
President, Van Brunt street house, rent 6 months.....	21,510 92	21,510 92	.....	133 33
President street, No. 32, rent 6 months.....	7,044 47	7,044 47	.....	408 00
Stable, Van Brunt street, rent 6 months.....	.....	.....	.....	100 00
		\$2,307,933 39		\$75,832 02

Deduct interest on \$3,800, 3.23 days less six months; one-eighth com. collection, Rochester city....

92 95  
\$75,739 07

### RECAPITULATION.

<i>Liabilities:</i>	
Amount due depositors as per semi-annual statement, principal.....	\$2,566,178 17
<i>Assets:</i>	
Market value assets June 30, 1874.....	\$2,307,933 39
Interest from all sources.....	75,639 17
	<u>2,383,672 46</u>
Deficiency.....	<u>\$181,505 71</u>

## SCHEDULE C.

STATEMENT OF EXPENSES FOR SIX MONTHS ENDING 30TH OF JUNE,  
1874.

Salaries for six months.....	\$9,850 00
Gas bill.....	29 15
Advertising.....	93 50
Petty cash-book.....	75 86
Referee foreclosure, President street.....	1,288 65
Joel W. Mason.....	24 00
Examining committee, property.....	47 00
Special examining committee, incidental.....	103 59
Gas bill.....	37 95
Petty cash.....	86 93
Insurance, \$5,000, bank building.....	25 00
Insurance, 32 President street.....	8 75
Examiners, Bank Department.....	79 11
Gas bill.....	29 97
Petty cash.....	56 17
G. T. Clark, Virginia suit.....	104 50
Insurance, President street.....	18 75
Bank Examiners.....	150 00
Gas bill.....	24 47
W. W. Sharp, annual advertising.....	226 90
Advertising, German papers.....	52 80
Advertising, German annual.....	131 20
Petty cash.....	44 12
Davies & Vanderpoel, law suits.....	1,750 00
Gas Co's bill.....	21 45
Roberts, stationery.....	71 15
W. W. Sharp, advertising.....	93 25
Campbell Bros., repairing.....	17 85
Petty cash.....	41 02
Insurance, President street.....	11 25
Gas bill.....	18 70
Petty cash.....	72 84
U. S. revenue tax to June 1st.....	1,381 31
Jas. Ross, coal, \$154.....	77 00
Plumbing bill, 32 President street.....	12 08
Plumbing, mantel bill.....	29 99
Plumbing, mantel bill.....	4 50
Interest on investment, President street, \$21,510.92.....	752 88
Interest on investment, 32 President street, \$7,044.47...	222 26

Taxes, President and Van Brunt sts., 1873, \$501.84.....	\$250 92
Taxes, 32 President street, \$186.46.....	93 23
Cash, A. T. Couplin, Virginia.....	504 00
Water tax, President and Van Brunt streets.....	18 00
Water tax, 32 President street, and stable.....	27 75
Tax, bank building, 1873, \$765.....	382 50
Gas bill, President street....	14 70
Plumbing, 32 President street.....	2 05
Plumbing, 32 President street.....	5 15
Carpentering .....	3 50
Agent McDonough, commission.....	27 06
	<hr/>
	\$17,206 11
Interest due depositors.....	73,574 66
	<hr/>
	<u>\$90,780 77</u>

### *Recapitulation.*

Amount of interest received and accrued, viz.:

Bonds and mortgages.....	\$26,185 25
Stocks and bonds.....	43,474 55
Oriental and other banks .....	3,886 14
City revenue bonds.....	1,604 16
Yonkers bonds.....	23 33
Goulard bond and mortgage.....	17 26
Rents Brooklyn property.....	641 33
	<hr/>
	\$75,832 02
Deduct interest on \$3,800.....	\$3.23
Deduct one-eighth commission, Rochester.....	92 05
	<hr/>
	<u>\$75,739 08</u>

Amount of int. credited to depositors on \$2,565,078.17...	\$73,574 66
Salaries.....	9,850 00
Taxes and revenue tax....	2,107 96
Advertising.....	599 65
Coal and gas bills.....	253 39
Bank department.....	229 11
Insurance.....	63 75
A. T. Conklin & Clark, Virginia.....	608 50
Special exchange, commissions and property.....	150 59
Repairs President street and gas.....	103 02
Agent McDonough.....	27 06

Petty cash and expenses. ....	\$376 94
Davies and Vanderpool. ....	1,750 00
Other expenses. ....	1,088 14
	<hr/>
	\$90,780 77
	75,739 07
	<hr/>
	<u>\$15,041 70</u>

STATE OF NEW YORK, }  
IN SENATE, *April 23, 1877.* }

A message was received from the Governor in words following :

“ STATE OF NEW YORK, EXECUTIVE CHAMBER, }  
ALBANY, *April 23, 1877.* }

*To the Senate :*

Since my message to the Senate of the date of April 5, 1877, recommending the removal from office of De Witt C. Ellis, Superintendent of the Banking Department, upon charges and proofs then presented. I have received additional charges against the same officer which I herewith submit for your consideration.

Of these, the following are made by Mr. John Mack, of 365 Fifth avenue, New York.

1. That Mr. Ellis was informed in March, 1875, by Geo. W. Reid and F. W. Aldrich, bank examiners, that the Bond Street Savings Bank had made investments not authorized by law, and that it then had a deficiency of \$20,000 in the annual income necessary to pay its dividends and expenses. The report of the gentlemen of their examinations made in March, 1875, attached to the next subsequent annual report of the department (see Assembly documents, 1876, No. 97, pp. 269, 270), sustains this allegation. Mr. Mack adds that the bank was not put into the hands of a receiver until the following year, 1876.

2. That Mr. Ellis was informed in November, 1875, by George W. Reid, examiner, that the People's Savings Bank, of New York city, had a large deficiency of assets and a deficiency of \$10,000 in annual income. The document previously quoted, page 316, sustains this allegation. Mr. Mack adds that no receiver was appointed until 1876.

3. A similar charge as to the Traders' Savings Bank.

4. A similar charge as to the Abingdon Square Savings Bank, reported by the examiner in November, 1875, as having violated its charter by certain transactions in real estate, sustained by the document already quoted, page 264.

5. A similar charge as to the German Savings Bank of Morrisania, reported in April, 1875, as having a deficiency of \$77,000 (see page 290

of document previously quoted), and allowed to go on until March, 1877, when it failed.

6. Charges of neglect of duty in reference to the Bank of Lansingburgh, the New York State Loan and Trust Company and the Loaners' Bank.

7. A charge that in the autumn of 1873 he, John Mack, personally urged upon Mr. Ellis the importance of an examination of the Security Bank, informing said Ellis that he, Mack, had reason to know that from \$60,000 to \$80,000 of its capital had been lost; that Ellis refused and neglected to make an examination; that in April, 1874, the bank failed, disclosing a loss of three-fourths of its capital.

In addition to these, the following charges are made by Edward Mallon of 434 West Twenty-eighth street, New York city, to wit:

That Mr. Ellis was informed by George W. Reid and W. F. Aldrich, bank examiners, that in a written report of an examination made by them of the Third Avenue Savings Bank, on the 22d and 23d of March, 1875, that the bank was then insolvent, having a deficiency of assets of \$219,226.81, and of annual income of \$44,791; that there was also an old deficiency of \$115,000, discovered in previous years, for which last-named deficiency the defendant had taken the personal bond of the trustees of the bank. These allegations are sustained by the report of the examiners, found in Assembly documents, 1876, No. 97, page 330.

Mr. Mallon alleges further that an additional deficiency of \$100,000 had been covered up by adding that amount to the cost of the banking-house. He also alleges that the trustees are now resisting payment of the bond of \$115,000, on the ground that there was no consideration given. He also alleges that the same report revealed large investments in real estate not authorized by the charter, and that many of the other securities were of doubtful value, which allegations appear to be sustained by the report above cited.

He also alleges that Mr. Ellis neglected to take any measures to close the bank, and that six months afterward, to wit, in September, 1875, it stopped payment; that during these six months great wrong was done by the trustees paying the deposits of certain favored friends, and by the bank, in that period, inducing 600 new accounts to be opened with it; and that a statement made by Mr. Ellis, in his report of the 30th of March, 1876, to the effect that, in consequence of the examination made in March, 1875, he, the superintendent, had caused the bank to be closed, is untrue; that the loss to depositors is about \$1,200,000, the dividend being only 15 per cent.

As the Senate is already engaged in investigating charges similar to those heretofore presented, I have not deemed it necessary to submit those now made to Mr. Ellis for any preliminary explanation on his

part. The allegations contained in these, that Mr. Ellis was officially notified by his own examiners of the dangerous, and, in fact, insolvent condition of the institutions named, are in several instances amply sustained by the documentary evidence cited. Whether he was guilty in any of those instances of culpable negligence in delaying proper action after he had been so notified, is a matter of very ready proof or disproof before you. That there may be no technical objection to investigation of and action upon these charges, I again recommend the removal of De Witt C. Ellis from the office of Superintendent of the Banking Department, as well upon the charges transmitted herewith as upon those heretofore presented and now under consideration in the Senate.

L. ROBINSON.

*Charges against De Witt C. Ellis, Superintendent of the Banking Department, as to the Third Avenue Savings Bank of the city of New York, preferred by Edward Mallon, of New York.*

That De Witt C. Ellis, Superintendent of the Banking Department, was informed by a written report of George W. Reid, the bank examiner, on or about March 28, 1875, that he had examined the Third Avenue Savings Bank on the 22d and 23d of March, 1875, and found the bank was insolvent.

That its deficiency was.....	\$219,226 81
And that its trustees, with the view of covering up a previous deficiency, had given their personal bonds to the amount of .....	115,000 00
There was also a previous deficiency which was attempted to be covered up and concealed from the public, by adding to the cost of their banking building the sum of	100,000 00
Making total deficiency of.....	<u>\$434,226 81</u>

The above-mentioned bonds given by the trustees are being defended by the said trustees on the ground of want of consideration ; that they were obtained under fraudulent representation, also that they were a part of a conspiracy to defraud the public, which could not have been carried out had the superintendent closed the institution when it was found to be insolvent.

The same report showed real estate in which the deposits had been improvidently invested, and which was plainly worth less than was reported by the bank as worth, and was an illegal investment, amounting to \$593,000.

(The above real estate has been sold by the receiver and only brought \$97,000, showing a loss of nearly \$500,000.)

Nearly all of the other assets were of a dubious character, and of uncertain value.

That in and after March, 1875, the examiner, George W. Reid, reported to said Ellis that the annual deficiency of income of said bank was over forty-five thousand (\$45,000) dollars, as appears by said Ellis' report. (See page 330, report March 30, 1876.) And that said institution was also declared by the examiner to have no surplus fund out of which these annual expenses could be paid, but was completely and hopelessly insolvent.

That the Superintendent of the Banking Department having been thus officially and fully informed of the utter and hopeless insolvency of the Third Avenue Savings Bank, in March, 1875, it thereupon became and was his duty as such superintendent to at once require the said bank to discontinue business and to recommend the Attorney-General to take steps to place the affairs and assets of the institution in the hands of a receiver and thus protect its depositors and the public.

That said Ellis violated his duty and took no measures whatever to cause the Third Avenue Savings Bank to discontinue business, or to protect its depositors, or to recommend to the Attorney-General to take proceedings to place the affairs and assets of the institution in the hands of a receiver, but, on the contrary, did permit this bank, being notoriously insolvent, to continue business without interruption from March 25, 1875, when he was officially informed of its insolvency, until the 28th day of September, 1875, when the trustees of the institution, of their own volition, passed a resolution that they would not open the doors of the bank on the 29th of September, 1875.

That this neglect of the said Ellis, for over six months, to perform his duty and cause said bank to discontinue business, was very detrimental to the interest of the depositors and the public at large, and that it enabled the trustees and officers to pay off the deposits of their friends, which was done by them to a great extent, thus creating a privileged class of depositors not contemplated by the statute relating to insolvent savings banks.

That the said bank being left to continue business as though it were solvent, induced some six hundred (600) new accounts to be opened by various depositors, who almost all lost the greater part of the deposits made by them.

That, in addition, a large number of the then depositors of said bank were thereby induced to make further deposits therein, and that the undersigned, who was one of such depositors, through the failure of said Ellis, as such superintendent, to take any steps to interfere

with its continuance in business, was thereby led to believe that such bank was solvent and did on or about April 20, 1875, deposit therein the sum of \$3,500 (all of which except fifteen per cent paid by the receiver) has since been lost to him.

That said Ellis, by his failure to recommend the Attorney-General to place this bank in hands of a receiver, did prevent the proper facts—as to the acts of the officers of the bank in illegally and fraudulently using the moneys and property of the bank—to become fully known until the statute of limitation for the punishment of such offenses had, by a few days only, rendered it impossible to punish those officers who had been guilty of gross frauds in connection with the funds of the institution.

That De Witt C. Ellis, in his official report submitted to the Legislature of the State under date of March 30, 1876, has made false statements to conceal the facts, and prevent it appearing on the face of his report that he had failed to perform his duty in regard to the Third Avenue Savings Bank, as above mentioned, which statements are contained on page 14 of the above-mentioned report, and are as follows :

“The examination of the bank made by the department in 1875 showed conclusively that the interest of the depositors required the bank to discontinue business, and, on my recommendation, the Attorney-General commenced an action and placed the institution in the hands of a receiver.”

The fact being that said Ellis had willfully neglected to do the very acts he reports that he did do, and that his report in this respect was wholly false and calculated to mislead the Legislature to whom it was his duty to report the truth only.

That by neglect of duty on part of said Ellis the depositors of said bank (of which I am one to the extent of \$8,000) have and will only receive 15 per cent of their deposits, making a loss to these depositors of about \$1,200,000, and that other members of my family who I am bound by the ties of consanguinity and affection to protect, were depositors in the Third Avenue Savings Bank, some having made such deposits about four months after the March 1875, examination of George W. Reid, the total of my family deposits being \$13,000.

The above is respectfully submitted.

EDWARD MALLON.

NEW YORK, *April* 19, 1877.



*Charges against De Witt C. Ellis, Superintendent of the Banking Department of the State of New York, of a general character, as to his neglect of duty as such Superintendent, and especially relating to the Bond Street Savings Bank, 'People's Savings Bank, Trades' Savings Bank, Abingdon Square Savings Bank, German Savings Bank of the town of Morrisania, the Bank of Lansingburgh, the New York State Loan and Trust Company, the Loaners' Bank, and the Security Bank.*

GENERAL NEGLECT AND INEFFICIENCY OF DE WITT C. ELLIS AS THE SUPERINTENDENT OF THE BANKING DEPARTMENT OF THE STATE OF NEW YORK.

I. That De Witt C. Ellis as Superintendent of the Banking Department, has so willfully neglected his duties as to have permitted something like fourteen or more savings banks in the city of New York to become insolvent, without in any manner interfering to restrain the continuance in business of said insolvent banks, except in one case, that of the Mechanics and Traders' Savings Bank of the city of New York (which had long been known to him in his official capacity as being both insolvent and badly managed).

II. That he has permitted other irregularities to exist in savings banks which will appear on examination of his reports to the Legislature and comparing them with the records of his office for more full explanation.

III. That by reason of which neglect the depositors and dealers with said banks have lost large sums of money, the number of these depositors being about 26,000, and each depositor representing on an average five persons depending on these savings, aggregates the enormous number of one 130,000 persons who have suffered great mental anxiety, and have been in many cases reduced to great want and even beggary, and fostering a feeling of distrust in the public mind as to the solvency of moneyed institutions.

IV. That by his negligence, incompetency and general inefficiency, he has permitted savings banks, which had no surplus, to expend large amounts of depositors' money in the erection of costly buildings, which are often absurd in style, unfitted for any business purposes, and, when obliged to be sold, bring but a small portion of the depositors' money back to them.

V. That by his neglect of duty the following named savings banks deposit banks and trust companies have failed or suffered great losses with liabilities to depositors and shareholders, about as follows :

Abingdon Square Savings Bank.....	\$150,000
German Savings Bank of Morrisania.....	500,000

Mechanics and Traders' Savings Bank .....	\$2,000,000
Bond Street Savings Bank .....	1,730,000
Mutual Benefit Savings Bank.....	450,00
New Amsterdam Savings Bank .....	750,000
People's Savings Bank .....	200,000
Security Savings Bank.....	400,000
Third Avenue Savings Bank .....	1,440,000
Trades' Savings Bank .....	120,000
Bank of Lansingburgh (stock deposits).....	1,000,000
New York State Loan and Trust Company ....	1,000,000
Loaners' Bank .....	500,000
Security Bank .....	500,000
Manufacturers and Builders' Bank .....	460,000
Making a total of .....	<u>\$11,200,000</u>

Of this large sum of over \$11,000,000, over one-half has been lost, and much of it actually squandered.

#### IN RELATION TO THE BOND STREET SAVINGS BANK OF THE CITY OF NEW YORK.

I. That on or about the 25th of March, 1875, George W. Reid and William F. Aldrich, examiners of the Banking Department, informed Superintendent De Witt C. Ellis, officially, that the Bond Street Savings Bank had made large investments not authorized by law (see pages 269 and 270 of the superintendent's annual report to the Legislature dated March 30, 1876), and that there was a deficiency of income of said bank of over \$20,000 per annum, all of which was true.

II. That it thereupon became the duty of said Ellis to cause said bank to discontinue business, and to cause it to be wound up according to law, but that no action was taken by the superintendent.

III. That this institution was put in the hands of a receiver subsequently in 1876, and has shown a loss of \$600,000 to depositors, a large part of which would have been saved if the superintendent had performed his duty in 1875.

#### IN RELATION TO THE PEOPLE'S SAVINGS BANK OF THE CITY OF NEW YORK.

I. That De Witt C. Ellis was officially notified by George W. Reid, examiner of savings banks, on or about the 10th of November, 1875, that the People's Savings Bank of New York city was insolvent. (See pages 315 and 316 of the report of the Superintendent of the Banking Department, made to the Legislature, March 30, 1876.)

II. That said George W. Reid, in his official capacity as examiner of banks, reported in writing, that the assets of the People's Savings Bank of New York, where only forty-nine per cent of the amount due the depositors.

III. That De Witt C. Ellis was also duly notified, that the total income was insufficient to pay the expenses of conducting the business of said bank, and that there was a deficiency of nearly \$11,000 in 1875. (See De Witt C. Ellis' Report, 1876, page 316.) And that the trustees had in violation of law declared and paid a dividend or dividends out of the deposits ; and

IV. That it thereupon became the duty of De Witt C. Ellis to cause said bank to discontinue business, and to recommend the Attorney-General to commence proceedings to place the institution in the hands of a receiver ; that said Ellis wholly failed to perform his duty, and to take any steps whatever, to cause said bank to discontinue business, or to secure the appointment of a receiver, by reason whereof said bank was allowed to continue business until it passed into the hands of a receiver , 1876, whereby the depositors sustained great losses.

#### IN RELATION TO THE TRADES' SAVINGS BANK OF THE CITY OF NEW YORK.

I. That it was brought to the knowledge of the superintendent by George W. Reid, the examiner of savings banks, that the Trades' Savings Bank of New York, was insolvent, and that its affairs were very badly managed, and on November 12, 1875, or thereabouts (see superintendent's report for 1875), the examiner reported that it was insolvent ; but between that date and January 13, 1876, the managers of the Trades' Savings Bank made a sham sale of real estate to one Mulvaney, and by fictitious entries in the books, made an appearance of solvency ; and

II. That it was the duty of De Witt C. Ellis, as Bank Superintendent, to have the Trades' Savings Bank discontinue business, and to have recommended the Attorney-General to commence an action to place the institution in the hands of a receiver, which he wholly neglected to do.

#### IN RELATION TO THE ABINGDON SQUARE SAVINGS BANK OF NEW YORK CITY.

I. That this bank was examined November 4, 1875, by George W. Reid, a bank examiner, whose report is to be found in the annual report of the Bank Department, March 30, 1876 (Assembly document No. 97, page 264), and exhibits this bank as having exchanged real estate in Brooklyn for purchase-money mortgages, which transac-

tion, the examiner said, in his report, was in "violation of its charter," which was the fact.

II. The mismanagement of this bank, was for a considerable period of time previous to the above examination, so often brought to the notice of the department, that the superintendent should have taken proceedings to protect its depositors and creditors, which he never did, but left the bank to the mercies of a set of speculators in real estate, who threw their losses on the bank, causing its subsequent disastrous failure, which would have been averted if he had performed his duty.

#### IN RELATION TO THE GERMAN SAVINGS BANK OF THE TOWN OF MORRISANIA, N. Y.

I. That De Witt C. Ellis was informed on or about the 24th of April, 1875, by George W. Reid, the official examiner, that there was a deficiency of assets in this bank of \$77,214.68 (see Report of the Banking department, March 30, 1876, Assembly document No. 97, page 290), that said De Witt C. Ellis, also, was informed in the same report of a very irregular exchange of the collaterals attached to a call loan for other bonds, which were of much less value, in fact, about worthless, and which loan itself was not authorized by the charter of the bank.

II. That the superintendent being thus officially informed that this bank was then insolvent, and its transaction of an illegal and improper character, it was his duty to have proceeded to protect its creditors, by recommending the Attorney-General to commence proceedings to place the bank in the hands of a receiver.

III. That said Ellis wholly failed to perform his duty in this respect, or to take any step to protect the interests of the depositors; that on or about March , 1877, the bank suspended payment with a deficit of a much larger amount than would have been the case if it had been wound up in April, 1875, as it was the duty of said Ellis to have required to have been done.

#### IN RELATION TO THE BANK OF LANSINGBURGH, OF LANSINGBURGH, N. Y.

I. That the Superintendent of the Banking Department, De Witt C. Ellis, should have at once examined the Bank of Lansingburgh on the receipt of their report, on or about December 30, 1876, stating that they were investing in coal railroad stocks, which they did to the amount of 4,500 shares, costing \$384,000; that he wholly failed to do so and allowed said bank to continue business until it failed in consequence of such investments, nearly the whole of which is lost, and great numbers of farmers, widow, and helpless people thereby lost

their property, most of which would have been saved if there had been a proper supervision and examination of this bank by said Ellis.

# IN RELATION TO THE NEW YORK STATE LOAN AND TRUST COMPANY OF NEW YORK CITY.

I. That some time about March, 1875, Superintendent Ellis was informed by George W. Reid, examiner of banks, officially, and William F. Aldrich and by others:

That the capital stock of the said trust company had been impaired to a large extent.

That said George W. Reid and William F. Aldrich had, while examining the said trust company, been informed that its officers acknowledged an impairment of capital of at least twenty per cent, and that many of the trustees believed the deficit to be very much larger, which was the fact.

II. That it thereupon became the duty of said Ellis to have caused the impaired capital to have been made good, or to have required the trust company to discontinue business, or to have recommended the Attorney-General to commence proceedings to place said trust company in the hands of a receiver.

III. That nothing was done by said Ellis; the trust company was left in the hands of the same parties until the 29th January, 1876, when the impairment of capital was increased to about ninety per cent, and the trustees voluntarily relinquished the remaining ten cents on the dollar to a receiver, making a loss of about \$900,000, this loss being mainly owing to the failure of said Ellis to properly perform his duty as such superintendent.

IV. That the condition of the said trust company was known to be bad to all persons familiar with its general operations at the time.

The trust companies chartered by the State were, in 1874, put by statute under the superintendence of De Witt C. Ellis, of the Banking Department.

That it was a neglect of duty on the part of said Ellis not at once to make a careful examination of this institution.

This examination was, however, deferred until March, 1875, and no action taken by the superintendent at all.

# IN RELATION TO THE LOANERS' BANK OF NEW YORK CITY.

That on or about the 1st of November, 1875, the superintendent was asked by a responsible party interested in said bank for a report of its condition.

That the bank never having been examined, the superintendent could give no report.

About the same time an attorney of New York wrote to the superintendent, asking by what authority of law the Loaners' Bank was doing business, and also asked to have it examined.

That said superintendent, in violation of his duty, never made any examination of said bank, and the same, which had long been insolvent, failed in May, 1876.

Its business had been disreputable, its very existence a swindle, its operations were worse than those of a low-class pawn shop, and the community lost about half a million dollars by it, all of which would have been detected, and much of which loss might have been saved, had the superintendent examined the institution when called upon to do so, or at an earlier date.

The "Pawners" Bank, chartered in 1868, was required to report to the Banking Department. In 1869 the name was changed to "Loaners' Bank."

#### IN RELATION TO THE SECURITY BANK OF THE CITY OF NEW YORK.

I. That De Witt C. Ellis, as Superintendent of the Banking Department, was personally informed by me (John Mack, of 365 Fifth avenue, New York city), in the autumn of 1873, that the Security Bank, which was then principally under the control of one Charles A. Colby and Henry D. Lewis, was being recklessly and unwisely managed so as to jeopardize its capital.

That I, John Mack, further told said Ellis that I had good reason to know that some sixty or eighty thousand dollars of the capital of the bank had already been lost, and urged upon the attention of the superintendent the importance of his at once examining its affairs and assets, in the hope that some check might be put on the wild and reckless banking carried on by those managing it.

That said Ellis, in violation of his duty as such superintendent, wholly failed to make any examination whatever of said institution.

That said bank subsequently, and on or about April, 1874, ceased to do business.

That if any such examination had been made by said Ellis when requested as aforesaid, it would have disclosed the fact that its capital was impaired, and it was not in a fit condition to carry on business.

That, by reason of the failure of said Ellis so to do, the capital of the bank was lost to the amount of about three-fourths of the whole amount of half a million of dollars, most of which would have been saved if the Bank Superintendent had done his duty.

I respectfully submit the above.

JOHN MACK.

NEW YORK, *April* 19, 1877.

Mr. McGuire, of counsel for the respondent, requested that the Senate would decide whether the respondent is to plead to the charges stated in the two messages of the Governor transmitted to the Senate April fifth and twenty-third respectively, and also to the charges contained in the documents accompanying said messages signed by Edward Mallon and John Mack.

Mr. Kennaday moved that the respondent answer to the charges preferred by the Governor in his messages to the Senate of April fifth and twenty-third, and not to the charges contained in the accompanying documents signed Edward Mallon and John Mack.

The President put the question whether the Senate would agree to said motion, and it was determined in the negative.

## FOR THE AFFIRMATIVE.

Kennaday	Prince	Selkreg	3
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## FOR THE NEGATIVE.

Baaden	Harris	Schoomaker	
Bixby	Lamont	Sprague	
Bradley	Loomis	Starbuck	
Carpenter	McCarthy	Tobey	
Cole	Moore	Vedder	
Coleman	Robertson	Wellman	
Emerson	St. John	Woodin	
Gerard	Sayre		23

Mr. McGuire, of counsel for the respondent, then answered by a general denial, reserving the right to put in such amended answer on Monday morning as the respondent may be advised.

Mr. Lamont moved that the Senate do now adjourn until Monday morning at 11 o'clock.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

## FOR THE AFFIRMATIVE.

Baaden	Loomis	Selkreg	
Bixby	McCarthy	Starbuck	
Harris	Moore	Tobey	
Kennaday	Prince	Vedder	
Lamont	Robertson		14

## FOR THE NEGATIVE.

Bradley	Emerson	Schoonmaker	
Carpenter	Gerard	Sprague	
Cole	St. John	Wellman	
Coleman	Sayre	Woodin	12

SARATOGA SPRINGS, MONDAY, *July 23, 1877.*

The Senate met pursuant to adjournment.

The Clerk called the roll, when the following Senators answered to their names:

Baaden	Kennaday	Sayre
Bixby	Lamont	Schoonmaker
Bradley	Loomis	Selkreg
Carpenter	McCarthy	Starbuck
Cole	Moore	Tobey
Coleman	Prince	Vedder
Emerson	Robertson	Wellman
Gerard	St. John	Woodin
Harris		

25

Also present, Messrs. Tracy, Olmstead and Tracy, of counsel for the State, and Messrs. Chapman and McGuire, of counsel for the respondent.

On motion, and by unanimous consent, the reading of the journal of Saturday, July 21, was dispensed with.

Mr. McGuire, of counsel for the respondent, presented an amended answer to the charges preferred by the Governor, in the words following:

IN THE MATTER OF THE CHARGES AGAINST DE WITT C. ELLIS, SUPERINTENDENT OF THE BANK DEPARTMENT.

*First.* The respondent comes and now here answering all and singular the charges, allegations and matters made and alleged against him in his official action as Superintendent of the Bank Department, by his Excellency the Governor, as contained in his message to the Senate, of dates respectively of the 5th and 23d days of April, 1877, admits that the special examiners therein named made to him reports at the time and times in said messages stated, of the condition of the banks therein referred to; and he further admits that he then had notice of the facts therein set forth. He also admits that he made the reports to the Legislature mentioned in the aforesaid messages, and to which the Governor refers as forming a part of the charges against this respondent. To said reports, as well as those of this said examiners, this respondent begs leave to refer for greater certainty and precision. He, however, specifically denies all charges, statements or allegations in said messages, or either of them, contained, of culpable negligence in the performance of his duties as the Superintendent of the Bank Department, or the willful, or other neglect of any duty imposed upon



him by the laws of this State in respect to any of the matters or things contained in the aforesaid messages of the Governor. On the contrary, he avers and insists, and respectfully submits to the consideration of the Senate, that by the laws in force at the time and times in said messages mentioned in respect to the Bank Department and the powers and duties of the Bank Superintendent, this respondent was invested with large discretionary powers in respect to all and singular the aforesaid matters and complaints, to be exercised in view of all surrounding and attendant circumstances as in his judgment not only the interests of individual depositors but the public interests and welfare demanded, and that in the exercise of his best judgment and a wise and just discretion, having regard to public as well as individual welfare, he performed or omitted to perform all and singular the matters and things in the aforesaid messages charged and contained, in so far as the same are herein admitted by this respondent.

*Second.* And as the respondent is required by the order of the Senate to answer the matters contained in the documents accompanying the aforesaid messages of the Governor, he respectfully submits that all matters therein alleged as to the construction or cost of building, the duties of receivers in the sale and disposition of property, or the amount or distribution of assets of any or all the banks mentioned in said messages by such receivers, and all proceedings in respect to said banks, the amount of assets, or the percentage distributed to depositors or any act or proceeding whatever, after the respondent notified the Attorney-General of the condition of said bank, are wholly irrelevant and immaterial, and he respectfully submits that no responsibility attaches to him on account of any of said matters or acts, nor should any prejudice invoked by a consideration thereof, but in so far as the same may be considered the respondent denies all and singular the matters in said document stated.

*Third.* That being now and at all times ready and willing to answer all charges in the aforesaid messages and accompanying documents contained, the respondent most respectfully submits to the Senate that he ought not to be required to answer, or the Senate to take cognizance of, loose, vague, indefinite and rambling statements contained in the said accompanying documents as being violative of the just rights of the respondent and contrary to all precedent, the statements being so indefinite and uncertain, the respondent would necessarily remain in ignorance of their nature, until, to his surprise, and without an opportunity to disprove the same, it may be disclosed in the trial, and the respondent begs leave to submit to the judgment of the Senate the propriety of admitting or rejecting proof of such statements when the same is offered on the trial.

*Fourth.* The respondent reserves all and singular the objections to the sufficiency of the charges so made against him, and to the materiality thereof as well as to the jurisdiction of this body to entertain cognizance of the same.

D. C. ELLIS.

O. W. CHAPMAN,

J. McGUIRE,

*Of Counsel for Respondent.*

Mr. Charles Tracy, of Counsel for the State, then proceeded to open the case on the part of the prosecution, at the conclusion of which Samuel N. Hurd, a witness on the part of the State, was sworn, and the examination suspended.

Abraham Sellers, a witness on the part of the State was sworn.

Mr. McGuire, of counsel for the respondent, objected to the testimony of Mr. Sellers as immaterial and irrelevant.

After hearing counsel, on motion of Mr. Woodin, the question of admitting the testimony was submitted to the Senate.

The President put the question whether the Senate would admit the testimony, and it was decided in the affirmative.

On motion of Mr. Kennaday the Senate took a recess until 4 o'clock, P. M.

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#### FOUR O'CLOCK P. M.

The Senate again met.

Mr. Chapman of counsel for respondent, stated to the Senate that he had been informed by telegraph that Mr. Ellis was sick in Albany and unable to attend to-day, and suggested that the Senate do now adjourn.

Mr. Kennaday moved that the Senate do adjourn until to-morrow at ten o'clock.

The President put the question whether they would agree to said motion, and it was decided in the affirmative, whereupon the Senate adjourned.

SARATOGA SPRINGS, TUESDAY, *July 24, 1877.*

The Senate met pursuant to adjournment.

The clerk called the roll, when the following Senators answered to their names :

Baaden	Kennaday	Schoonmaker	
Bixby	Lamont	Selkreg	
Bradley	Loomis	Starbuck	
Carpenter	McCarthy	Tobey	
Cole	Moore	Vedder	
Coleman	Prince	Wagner	
Emerson	Robertson	Wagstaff	
Gerard	St. John	Wellman	
Harris	Sayre	Woodin	27

Present also, Messrs. Tracy, Olmstead and Tracy of counsel for the prosecution, and Orlow W. Chapman and Jeremiah McGuire, Esqs., of counsel for the respondent.

Mr. McGuire stated to the Senate that the continued illness of the respondent would prevent his attendance to-day, and as counsel were unwilling to proceed during his absence, they asked the indulgence of the senate and requested that further proceedings be postponed until to-morrow.

After hearing counsel, and pending the question to postpone,

Frederick Smythe, a witness on the part of the prosecution, was sworn.

The following documentary evidence was offered : Bond of Spencer K. Green and others, marked Exhibit 1 ; bond of William A. Darling and others, marked Exhibit 2 ; bond of David Morgan and others, marked Exhibit 3.

Mr. McGuire objected to the reception of the evidence.

The President ruled the testimony competent.

Mr. Tracy offered the following documentary testimony :

Summons and complaint. Samuel H. Hurd, receiver of the Third Avenue Savings Bank v. Spencer K. Green, on \$15,000 bond, marked Exhibit 4.

Same v. Geo Hencken, Jr., \$100,000 bond ; Same v. John H. Lyon, \$100,000 bond ; Same v. William A. Darling, \$100,000 bond ; Same v. Thompson W. Decker, \$100,000 bond ; Same v. Wm. D. Harrison, \$100,000 bond ; Same v. Richard Kelley, \$100,000 bond ; Same v. D. D. T. Marshall, \$100,000 bond ; Same v. James Owens, \$100,000 bond ; Same v. William D. Bruns, \$100,000 bond marked Exhibit 5.

Same v. James Owens, \$600 bond ; Same v. Wm. B. Harrison, \$600

bond ; Same v. William D. Bruns, \$600 bond ; Same v. Geo. Hencken, Jr., \$600 bond, marked Exhibit 6.

Mr. McGuire objecting,

The President put the question whether the Senate would receive the evidence, and it was decided in the affirmative, as follows :

FOR THE AFFIRMATIVE.

Baden	Emerson	Moore
Bixby	Gerard	St. John
Bradley	Harris	Schoonmaker
Carpenter	Loomis	Wagstaff
Coleman	McCarthy	14

FOR THE NEGATIVE.

Cole	Robertson	Wagner
Kennaday	Selkreg	Wellman
Lamont	Starbuck	Woodin
Prince	Vedder	11

Mr. Cole moved that the Senate do now adjourn.

The President put the question whether the Senate would agree to said motion, and it was decided in the negative.

Mr. Bradley moved that one copy only of the summons and complaint in each of the classes enumerated be printed.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Abraham Sellers, a witness on the part of the prosecution, was recalled, and pending his examination,

On motion of Mr. Bixby, the Senate adjourned.

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SARATOGA SPRINGS, WEDNESDAY, *July 25, 1877.*

The Senate met pursuant to adjournment.

The Clerk called the roll, when the following Senators answered to their names :

Baaden	Harris	Schoonmaker
Bixby	Kennaday	Selkreg
Bradley	Lamont	Starbuck
Carpenter	Loomis	Tobey
Cole	McCarthy	Vedder
Coleman	Moore	Wagner
Doolittle	Prince	Wagstaff
Emerson	Robertson	Wellman
Gerard	St. John	Woodin
Hammond	Sayre	

Also present, Messrs. Tracy, Olmstead and Tracy, of counsel for the prosecution, and Orlow W. Chapman and Jeremiah McGuire, Esqs., of counsel for the respondent.

Mr. Robertson offered the following:

*Resolved*, That the Comptroller be requested to pay, upon the certificate of the presiding officer of the Senate, witnesses attending on the proceedings pending before the Senate upon charges against De Witt C. Ellis, the Superintendent of the Bank Department, the same fees as are allowed in civil cases in courts of record.

The President put the question whether the Senate would agree to said resolution, and it was decided in the affirmative.

#### FOR THE AFFIRMATIVE.

Baaden	Harris	Sayre
Bixby	Kennaday	Schoonmaker
Bradley	Lamont	Selkreg
Carpenter	Loomis	Starbuck
Cole	McCarthy	Tobey
Coleman	Moore	Vedder
Doolittle	Prince	Wagner
Emerson	Robertson	Wellman
Gerard	S. John	Woodin
Hammond		

28

Abraham Sellers, a witness on the part of the prosecution, was recalled, and testimony continued.

Samuel H. Hurd, witness on the part of the prosecution, was recalled.

Isaac Smith, witness on the part of the prosecution, sworn.

Isaac H. Vrooman, witness on the part of the prosecution, sworn.

Mr. Schoonmaker moved that the sense of the Senate be taken upon the question of admitting testimony relative to the amount paid by the banking associations in the State for examinations made by the Banking Department.

After debate,

The President put the question whether the Senate would agree to said motion, and it was decided in the negative.

#### FOR THE AFFIRMATIVE.

Bixby	Hammond	Starbuck
Bradley	St. John	Wagstaff
Coleman	Sayre	Woodin
Doolittle	Schoonmaker	

11

## FOR THE NEGATIVE.

Baaden	Lamont	Robertson	
Cole	Loomis	Selkreg	
Emerson	McCarthy	Vedder	
Gerard	Moore	Wagner	
Harris	Prince	Wellman	16
Kennaday			

The President presented the following :

*To the Hon. WM. DORSHEIMER, President of the Senate :*

I hereby respectfully resign as stenographer to the Senate.

HUDSON C. TANNER.

Mr. Schoonmaker offered the following :

*Whereas*, The investigation of the charges preferred by his Excellency, the Governor, against De Witt C. Ellis, Superintendent of the Bank Department, has created an emergency requiring a sufficient stenographic force to report the proceedings before the Senate ; therefore

*Resolved*, That Hudson C. Tanner be and he hereby is appointed stenographer, to report the proceedings in said matter before the Senate, with such assistants as he shall deem necessary, at a compensation of twenty-five cents per folio, which shall be in full for his services, and such assistant stenographers and amanuenses, as he may employ.

The President put the question whether the Senate would agree to said resolution, and it was decided in the affirmative.

## FOR THE AFFIRMATIVE.

Raaden	Lamont	Sayre	
Bixby	Loomis	Schoonmaker	
Bradley	McCarthy	Selkreg	
Coleman	Moore	Vedder	
Doolittle	Prince	Wagstaff	
Harris	Robertson	Wellman	
Kennaday	St. John		20

Mr. McCarthy moved that the Senate do now take a recess until 5 o'clock.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

## FIVE O'CLOCK P. M.

The Senate again met.

Hudson C. Tanner was sworn, as stenographer, to report the proceedings in the trial of De Witt C. Ellis.

Abraham Sellers, witness for the prosecution, recalled.

Isaac Smith, witness for the prosecution, recalled.

The counsel for the prosecution put in evidence the following documents :

Statement of the condition of the Third Avenue Savings Bank, July 1, 1873, as shown by the report of the bank, marked Exhibit 7.

Statement of the condition of the Third Avenue Savings Bank, as shown by the report of the examiners, April 14, 1873, marked Exhibit 8.

Statement of the condition of the Third Avenue Savings Bank, as shown by report of Examiner Keyes, in 1871, marked Exhibit 9.

Pending the examination of Mr. Smith, the hour of 6 o'clock having arrived.

Mr. McCarthy moved that the session be extended until 7 o'clock.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Mr. Bixby moved that when the Senate adjourns to-day it adjourn to meet to-morrow morning at 10 o'clock.

Mr. Loomis moved to amend by adding thereto the words "and will adjourn at 1 o'clock P. M."

The President put the question whether the Senate would agree to said motion to amend, and it was decided in the affirmative.

The President then put the question whether the Senate would agree to said motion of Mr. Bixby, as amended, and it was decided in the affirmative.

William F. Aldrich, witness on the part of the prosecution was sworn.

The hour of 7 o'clock having arrived, the Senate adjourned.

SARATOGA SPRINGS, THURSDAY, *July 26, 1877.*

The Senate met pursuant to adjournment.

The clerk called the roll, when the following Senators answered to their names :

Baaden	Hammond	Sayre	
Bixby	Harris	Schoonmaker	
Bradley	Kennaday	Selkreg	
Carpenter	Lamont	Starbuck	
Cole	Loomis	Vedder	
Coleman	McCarthy	Wagner	
Doolittle	Prince	Wagstaff	
Emerson	Robertson	Wellman	
Gerard	St. John	Woodin	27

Present, also, Messrs. Tracy, Olmstead and Tracy, of counsel for the prosecution, and Orlow W. Chapman and Jeremiah McGuire, Esqs., of counsel for the respondent.

Edward M. Plumb, witness on the part of the prosecution, sworn.

The following documents were admitted in evidence.

Schedule A, annexed to report of S. H. Hurd, receiver of Third Avenue Savings Bank, filed in office of clerk of the city and county of New York, marked Exhibit 10.

Schedule B, statement of bonds sold, Exhibit 11.

William F. Aldrich recalled.

S. F. Hurd recalled.

Henry L. Lamb, sworn on the part of the prosecution. Counsel for the prosecution offered in evidence report of Mr. Reid relative to condition of Trades' Savings Bank, produced in evidence.

Mr. Chapman, of counsel for respondent, objecting.

The President ruled that the same should be admitted, and the same was marked Exhibit 12.

The following documents were admitted in evidence: Report of Trades' Savings Bank, January 1, 1874, marked Exhibit 13; letter of G. W. Reid, dated February 5, 1874, marked Exhibit 14; report of the Trades' Savings Bank, January 1, 1875, marked Exhibit 15; report of G. W. Reid, bank examiner, November 12, 1875, marked Exhibit 16.

Mr. McCarthy moved that the Senate take a recess until 4 o'clock.

The President put the question whether the Senate would agree to said motion, and it was decided in the negative.

#### FOR THE AFFIRMATIVE.

Bixby	Loomis	Vedder
Gerard	Selkreg	



## FOR THE NEGATIVE.

Baaden	Kennaday	Schoonmaker
Bradley	McCarthy	Starbuck
Cole	Prince	Wagner
Coleman	Robertson	Wagstaff
Doolittle	St. John	Wellman
Emerson	Sayre	Woodin
Harris		

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The following documents were admitted in evidence: Report of Trades' Savings Bank, January 1, 1876, marked Exhibit 17; letter of G. W. Reid, dated January 4, 1876, Exhibit 18; letter of G. W. Reid, dated January 13, 1876, accompanying report of examination made by G. W. Reid, January 13, 1876, Exhibit 19; letter of G. W. Reid, dated January 19, 1876, Exhibit 20; letter of G. W. Reid, to H. L. Lamb, August 2, 1876, Exhibit 21; commission of G. W. Reid as examiner in matter of Trades' Savings Bank, and report thereon Exhibit 22; letter of H. L. Lamb to Attorney-General Fairchild, August 14, 1876, Exhibit 23.

Pending the examination of Mr. Lamb,

On motion of Mr. Carpenter and by unanimous consent, the rules were suspended, and the Senate in open executive session confirmed the nomination of Charles Wheaton, Joseph Howland and Charles F. Brown as Managers of the Hudson River State Hospital for the Insane.

On motion of Mr. Carpenter, and by unanimous consent, the rules were suspended, and the Clerk was directed to transmit such confirmation to the Governor immediately.

The hour of 2 o'clock having arrived, the Senate took a recess until 4 o'clock p. m.

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FOUR O'CLOCK P. M.

The Senate again met.

The examination of H. L. Lamb continued.

The following documents were admitted in evidence: Letter of G. W. Reid to H. L. Lamb, August 29, 1876, Exhibit 24; letter of G. W. Reid to H. L. Lamb, August 30, 1876, Exhibit 25; letter of G. W. Reid to H. L. Lamb, September 2, 1876, Exhibit 26; letter of G. W. Reid to D. C. Ellis, September 20, 1876, Exhibit 27; letter of G. W. Reid to D. C. Ellis, September 23, 1876, Exhibit 28; letter of G. W. Reid to D. C. Ellis, October 7, 1876, Exhibit 29; letter of G. W. Reid

to D. C. Ellis, September 9, 1876, Exhibit 30; letter of G. W. Reid to D. C. Ellis, December 15, 1873, Exhibit 31.

Certificate of the register of the city and county of New York relative to record of mortgages, Exhibit 32.

George W. Reid sworn for the prosecution.

The question proposed by the counsel for the prosecution as to the Mulvaney mortgage after the same was in the hands of the Attorney-General, being objected to by Mr. McGuire,

The President put the question whether the Senate would admit the same, and it was decided in the affirmative.

By Mr. Schoonmaker:

Q. Did you report the Trades' Savings Bank to Mr. Ellis, in January, 1876, as being in a safe condition to continue business?

Mr. Prince objecting,

The President put the question whether the Senate would allow said question, and it was decided in the negative.

#### FOR THE AFFIRMATIVE.

Gerard	McCarthy	Schoonmaker
Kennaday	St. John	Wagner
Loomis		

7

#### FOR THE NEGATIVE.

Bradley	Emerson	Starbuck
Cole	Prince	Vedder
Coleman	Robertson	Woodin
Doolittle	Selkreg	

11

Mr. Cole moved that the Senate do now adjourn until to-morrow morning at 10 o'clock.

Mr. Gerard moved to amend by striking out the words "10 oclock" and inserting the words "11 o'clock."

The President put the question whether the Senate would agree to said motion, and it was decided in the negative.

Mr. Gerard moved to amend by striking out the words "10 o'clock" and inserting the words "half-past 10."

The President put the question whether the Senate would agree to said motion, and it was decided in the negative.

Mr. Prince moved to amend by striking out the words "10 o'clock" and inserting the words "quarter before 11 o'clock."

The President put the question whether the Senate would agree to said motion, and it was decided in the negative.

The President then put the question whether the Senate would agree to the original motion of Mr. Cole, and it was decided in the affirmative.

Whereupon the Senate adjourned.

SARATOGA SPRINGS, FRIDAY, *July 27, 1877.*

Senate met pursuant to adjournment.

The Clerk called the roll, when the following Senators answered to their names :

Baden	Harris	Schoonmaker
Bixby	Kennaday	Selkreg
Bradley	Lamont	Starbuck
Carpenter	Loomis	Tobey
Cole	McCarthy	Vedder
Coleman	Prince	Wagner
Doolittle	Robertson	Wagstaff
Gerard	St. John	Woodin
Hammond	Sayre	

26

Also present, Messrs. Tracy, Olmstead and Tracy, of counsel for the prosecution, and Orlow W. Chapman and Jeremiah McGuire, Esqs., of counsel for the respondent.

Samuel B. White, witness on the part of the prosecution, sworn.

Mr. McGuire objected to testimony concerning the amount realized from the assets of the Trades' Savings Bank after the same were placed in hands of the receiver.

The President ruled the testimony competent ; exception of counsel noted.

Mr. Chapman offered in evidence order appointing S. B. White receiver of the Trades' Savings Bank. Marked Exhibit 33.

Mr. Tracy put in evidence the appraisalment : *People v. Third Avenue Savings Bank.* Exhibit 34.

Mr. McGuire put in evidence Schedules C, D, E, F, K. Marked Exhibit 35.

Mr. Schoonmaker presented a telegram from T. R. Westbrook, inviting the Senate and officers to the Kingston Centennial celebration.

Mr. Gerard moved that the Clerk be directed to respond to the invitation, and to state that the public duties at present occupying the attention of the Senate would prevent the attendance of the members upon the occasion.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

H. L. Lamb, witness on part of prosecution.

The following documents were admitted in evidence :

Report of the People's Savings Bank, July 1, 1873, with letter of Chas. F. Rodgers, secretary, and vouchers. Exhibit 36.

Special examination of the People's Savings Bank, dated September 4 and 5, 1873. Exhibit 37.

Sheldon W. Swaney, witness for prosecution, sworn.

The following documents were admitted in evidence :

Judgment roll — People v. People's Savings Bank, dated September 22, 1873. Exhibit 38.

Answer of Fred. Olmstead, in suit of People v. People's Savings Bank, October 23, 1873. Exhibit 39.

Stipulation do. Exhibit 40.

H. L. Lamb recalled.

The following documents were admitted in evidence :

Letter of Chas. T. Rodgers, secretary, to Superintendent of Bank Department, October 3, 1873. Exhibit 41.

Letter of Charles T. Rodgers, secretary, to Superintendent of Bank Department, October 3, 1873. Exhibit 42.

Letter of Charles T. Rodgers, secretary, to Superintendent of Bank Department, October 23, 1873. Exhibit 43.

Report of People's Savings Bank, January 4, 1874, and schedules. Exhibit 44.

Pending the examination of Mr. Lamb,

Mr. Vedder moved that the Senate take a recess until 4 o'clock.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

#### FOR THE AFFIRMATIVE.

Bixby	Hammond	Starbuck
Bradley	Kennaday	Tobey
Carpenter	Prince	Vedder
Cole	Sayre	Wagstaff
Gerard		

13

#### FOR THE NEGATIVE.

Coleman	McCarthy	Schoonmaker
Doolittle	Robertson	Wagner
Harris	St. John	

8

Whereupon the Senate took a recess until 4 P. M.

## FOUR O'CLOCK, P. M.

The Senate again met.

Mr. Harris offered the following :

*Resolved*, That the compensation of Robert T. McIntyre, who was appointed by the President and Clerk of the Senate to take charge of the room occupied by the Senate during the trial of De Witt C. Ellis, be the same as that allowed by law to the janitor of the Senate.

Mr. Harris moved that said resolution be laid upon the table.

The President put the question whether the Senate would agree to said motion, and it was determined in the affirmative.

Examination of H. L. Lamb continued.

The following documents were admitted in evidence :

Report of People's Savings Bank, February 1, 1875. Marked Exhibit 45.

Report of People's Savings Bank, July 1, 1875. Exhibit 46.

Letters of G. W. Reid to D. C. Ellis, November 10 and 11, 1875. Exhibit 47.

Isaac Smith recalled.

G. W. Reid recalled.

Isaac V. French, witness for prosecution, sworn.

The question proposed by Mr. McGuire — "What was the difference between the bid and the amount paid to the receiver on the sales?"

Mr. Loomis objecting.

The President put the question whether the Senate would admit such testimony, and it was decided in the negative.

Mr. Woodin offered the following :

*Resolved*, That the proof to be offered in the matter of the Third Avenue Savings Bank, the Trades' Savings Bank and the People's Savings Bank be concluded before proceeding to investigate any of the charges in relation to either of the other savings banks or moneyed institutions referred to in the messages of the Governor.

The President put the question whether the Senate would agree to said resolution, and it was decided in the affirmative.

Mr. Kennaday moved to reconsider the vote by which said resolution was agreed to and that said motion be laid upon the table.

The President put the question whether the Senate would agree to said motion to lay on the table, and it was decided in the affirmative.

## FOR THE AFFIRMATIVE.

Bixby	Kennaday	Selkreg
Bradley	St. John	Starbuck
Cole	Schoonmaker	Wagstaff
Gerard		

## FOR THE NEGATIVE.

Coleman	Loomis	Robertson
Doolittle	McCarthy	Woodin
Harris		

7

Mr. Wagstaff moved that the Senate adjourn until to-morrow morning at 10 o'clock.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Whereupon the Senate adjourned.

SARATOGA SPRINGS, SATURDAY, *July 28, 1877.*

Senate met pursuant to adjournment.

The Clerk called the roll, when the following Senators answered to their names:

Baaden	Gerard	Robertson	
Bixby	Hammond	St. John	
Bradley	Harris	Schoonmaker	
Cole	Kennaday	Starbuck	
Coleman	Loomis	Tobey	
Doolittle	McCarthy	Wagstaff	
Emerson	Prince	Woodin	21

Present, also, Messrs. Tracy, Olmstead and Tracy, of counsel for the prosecution, and Orlow W. Chapman and Jeremiah McGuire, Esqs., of counsel for the respondent.

Isaac V. French recalled.

The following document was admitted in evidence:

Telegram of C. T. Rodgers to D. C. Ellis, February 23, 1875.  
Exhibit 48.

G. W. Reid recalled.

Special examination of People's Savings Bank, dated October 9, 1874. Exhibit 49.

H. L. Lamb recalled.

S. W. Swaney recalled.

Letter of D. C. Ellis to Attorney-General, November 4, 1875.  
Exhibit 50.

Edgar A. Werner sworn. Pending examination,

Mr. Lamont moved that the Senate do now adjourn until Monday afternoon, at four o'clock.

Mr. Gerard moved to amend so as to read that the Senate continue

in session until two o'clock, at which time it will adjourn until Monday morning at ten o'clock.

The President put the question whether the Senate would agree to said amendment, and it was decided in the affirmative.

The President then put the question upon the original motion as amended and it was decided in the affirmative.

The President directed the Clerk to call the roll, with a view to ascertain whether a quorum was present.

The Clerk called the roll, and the following Senators answered to their names :

Baaden	Gerard	Robertson
Bixby	Hammond	St. John
Bradley	Harris	Starbuck
Cole	Kennaday	Tobey
Coleman	Prince	Wagstaff
Emerson		

16

Mr. St. John moved that the Senate do now adjourn.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Whereupon the Senate adjourned until Monday morning at ten o'clock.

SARATOGA SPRINGS, MONDAY, *July 30, 1877.*

Senate met pursuant to adjournment.

On motion of Mr. Harris, and by unanimous consent, all proceedings down to and including the calling of the roll was dispensed with.

Mr. Kennaday moved that the Senate take a recess until four o'clock.

The President put the question whether the Senate would agree to said motion, and it was decided in the negative.

Mr. Kennaday requested that the roll be called.

The Clerk, by direction of the President, then called the roll, when the following Senators answered to their names :

Baaden	Gerard	Robertson
Bixby	Hammond	St. John
Bradley	Harris	Starbuck
Coleman	Kennaday	Tobey
Emerson	Prince	Vedder

15

There being no quorum present

Mr. Kennaday moved that the Senate take a recess until four o'clock, P. M.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

#### FOUR O'CLOCK, P. M.

Senate again met.

The Clerk called the roll, when the following Senators answered to their names:

Baaden	Hammond	Robertson	
Bixby	Harris	St. John	
Bradley	Kennaday	Starbuck	
Carpenter	Lamont	Tobey	
Coleman	Loomis	Vedder	
Gerard	Prince	Wagner	18

Also present, Messrs. Tracy, Olmstead and Tracy, of counsel for the prosecution, and Orlow W. Chapman and Jeremiah McGuire, Esqs., of counsel for the respondent.

Mr. Tracy proposed to read the report of the examiner of the Bank Department, relative to the condition of the Mechanics and Traders' Institution.

Mr. Chapman objected to any evidence being introduced in support of charges outside of those embraced in the first message of the Governor to the Senate.

After debate and hearing counsel,

The President put the question whether the Senate would admit such evidence, and it was decided in the affirmative.

Ira W. Gregory sworn on the part of the prosecution.

William Floyd sworn on the part of the prosecution.

Pending the examination of Mr. Floyd, the hour of six o'clock having arrived,

Mr. Gerard moved that the session be extended until seven o'clock.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

William J. Best sworn on the part of the prosecution.

To question of counsel for the prosecution, relative to expenditures charged in 1864 and 1868, in the matter of the Mechanics and Traders' Savings Institution, Mr. McGuire objected.

The President put the question whether the Senate would admit the testimony, and it was decided in the affirmative.

Pending the examination of Mr. Best,



Mr. Tobey moved that the Senate adjourn until to-morrow morning at ten o'clock.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Whereupon the Senate adjourned.

SARATOGA SPRINGS, TUESDAY, *July 31, 1877.*

Senate met pursuant to adjournment.

The Clerk called the roll, when the following Senators answered to their names :

Baaden	Hammond	St. John
Bixby	Harris	Sayre
Bradley	Kenna'day	Selkreg
Carpenter	Lamont	Starbuck
Cole	Loomis	Tobey
Coleman	McCarthy	Wagner
Doolittle	Moore	Wagstaff
Emerson	Prince	Wellman
Gerard	Robertson	

26

Also present, Messrs. Tracy, Olmstead and Tracy, of counsel for the prosecution, and Orlow W. Chapman and Jeremiah McGuire, Esqs., of counsel for the respondent.

William J. Best witness for prosecution, recalled.

Isaac Smith recalled.

The following documents were admitted in evidence: Report of Mechanics and Traders' Savings Institution, January 1, 1876. Marked Exhibit 51.

Corrected report of Mechanics and Traders' Savings Institution, January 1, 1876. Marked Exhibit 52.

Mr. Harris moved to take from the table the resolution in the words following :

*Resolved*, That the compensation of Robert F. McIntyre, who was appointed by the President and Clerk of the Senate to take charge of the room occupied by the Senate during the trial of DeWitt C. Ellis, be the same as that allowed by law to the janitor of the Senate.

The President put the question whether the Senate would agree to said motion to take from the table, and it was decided in the affirmative.

The President put the question whether the Senate would agree to said resolution, and it was decided in the affirmative.

## FOR THE AFFIRMATIVE.

Baaden	Harris	St. John
Bixby	Kennaday	Sayre
Carpenter	Lamont	Selkreg
Cole	Loomis	Starbuck
Coleman	McCarthy	Vedder
Doolittle	Moore	Wagstaff
Emerson	Prince	Wellman
Gerard	Robertson	

23

Mr. Vedder offered the following :

*Resolved*, That the doorkeeper of the Senate be authorized and directed to serve subpoenas in the absence of the sergeant-at-arms upon request of counsel for the State or of the respondent.

The President put the question whether the Senate would agree to said resolution, and it was decided in the affirmative.

H. L. Lamb recalled for the prosecution.

The following documents were admitted in evidence :

Appointment of G. W. Reid to examine the accounts, etc. of Mechanics and Traders' Institution, and his report thereon, dated March 7, 1876. Exhibit 53.

Letter of G. W. Reid to D. C. Ellis, March 11, 1876. Exhibit 54.

Letter of G. W. Reid to D. C. Ellis, March 15, 1876. Exhibit 55.

Letter of G. W. Reid to D. C. Ellis, May 26, 1876. Exhibit 56.

Letter of G. W. Reid to D. C. Ellis, June 14, 1876. Exhibit 57.

G. W. Reid recalled for the prosecution.

Frederick P. Bellamy sworn on the part of the prosecution.

Mr. Prince moved that S. B. White, a witness on the part of the prosecution, be recalled for further examination.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Mr. Lamont moved that the Senate take a recess until four o'clock P. M.

The President put the question whether the Senate would agree to said motion, and it was decided in the negative.

## FOR THE AFFIRMATIVE.

Baaden	Lamont	Sayre
Hammond	Loomis	Selkreg

6

## FOR THE NEGATIVE.

Bradley	Kennaday	St. John
Cole	McCarthy	Starbuck
Coleman	Moore	Vedder

Doolittle  
Gerard  
Harris

Prince  
Robertson

Wagner  
Wellman

16

H. L. Lamb recalled.

Hale Kingsley sworn on the part of the prosecution.

The following documents were admitted in evidence:

People v. The Mechanics and Traders' Savings Institution — order appointing W. J. Best receiver. Exhibit 58.

Mr. Vedder moved that the Senate take a recess until four o'clock P. M.

The President put the question whether the Senate would agree to said motion, and it was decided in the negative.

#### FOR THE AFFIRMATIVE.

Baaden  
Carpenter

Hammond                      \*    Vedder  
Starbuck

5

#### FOR THE NEGATIVE.

Bradley  
Cole  
Doolittle  
Gerard  
Harris

Lamont  
McCarthy  
Moore  
Robertson  
St. John

Sayre  
Selkreg  
Wagner  
Wellman

14

The counsel for the prosecution offered to read the report of the receiver of the Mechanics and Traders' Savings Institution.

Mr. McGuire objected to receiving the same, as it included comment and statements of receiver.

The President put the question whether the Senate would admit such report, and it was decided in the negative.

The counsel for prosecution offered in evidence receiver's report of sale, The People v. Mechanics and Traders' Savings Institution. Exhibit 59.

Order confirming receiver's sales in same suit. Exhibit 60.

Mr. Kennaday moved to reconsider the vote excluding the report of the receiver of the Mechanics and Traders' Savings Institution.

After debate,

Mr. Tracy withdrew the report.

Mr. Kennaday moved that the Senate take a recess until four o'clock P. M.

The President put the question whether the Senate would agree to said motion, and it was decided in the negative.

## FOR THE AFFIRMATIVE.

Bradley	Gerard	Sayre	9
Carpenter	Kennaday	Starbuck	
Emerson	Robertson	Wellman	

## FOR THE NEGATIVE.

Cole	Harris	Moore	10
Coleman	Lamont	Vedder	
Doolittle	McCarthy	Wagner	
Hammond			

Mr. Tracy, of counsel, then stated that the prosecution would now proceed to take up the case of the Abingdon Square Savings Bank.

Mr. Kennaday moved that the Senate take a recess until four o'clock P. M.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

## FOR THE AFFIRMATIVE.

Bradley	Kennaday	Starbuck	13
Carpenter	Lamont	Vedder	
Emerson	Robertson	Wagner	
Gerard	Sayre	Wellman	
Hammond			

## FOR THE NEGATIVE.

Cole	Doolittle	McCarthy	6
Coleman	Harris	Moore	

Whereupon the Senate took a recess until four o'clock P. M.

## FOUR O'CLOCK P. M.

Senate again met.

The Clerk called the roll, when the following Senators answered to their names :

Bixby	Harris	St. John	24
Bradley	Kennaday	Sayre	
Carpenter	Lamont	Selkreg	
Cole	Loomis	Starbuck	
Coleman	McCarthy	Vedder	
Doolittle	Moore	Wagner	
Emerson	Prince	Wagstaff	
Gerard	Robertson	Wellman	

Wm. J. Best recalled.

H. L. Lamb examined.

The following documents were admitted in evidence :

Report of G. W. Reid, examiner, as to condition of Abingdon Square Savings Bank, December 1, 1873. Exhibit 61.

Report of Abingdon Square Savings Bank and schedules, January, 1874. Exhibit 62.

Letter of G. W. Reid to D. C. Ellis, December 27, 1873. Exhibit 63.

Report and schedules of Abingdon Square Savings Bank, July 25, 1874. Exhibit 64.

Report and schedules of Abingdon Square Savings Bank, January 1, 1875. Exhibit 65.

Report and schedules of Abingdon Square Savings Bank, January 1, 1876. Exhibit 66.

Letter of G. W. Reid to D. C. Ellis, July 6, 1876. Exhibit 67.

Letter of G. W. Reid to D. C. Ellis, July 19, 1876. Exhibit 68.

Letter of G. W. Reid to D. C. Ellis, July 26, 1876. Exhibit 69.

The hour of six o'clock having arrived,

Mr. Gerard moved that the session be extended until seven o'clock.

The President put the question whether the Senate would agree to said motion, and it was decided in the negative.

Mr. McCarthy moved that the Senate do adjourn until to-morrow morning at ten o'clock.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Whereupon the Senate adjourned.

SARATOGA SPRINGS, WEDNESDAY, *August 1, 1877.*

The Senate met pursuant to adjournment.

The Clerk called the roll, when the following Senators answered to their names :

Baaden	Hammond	St. John
Bixby	Harris	Sayre
Bradley	Kennaday	Schoonmaker
Carpenter	Lamont	Selkreg
Cole	Loomis	Starbuck
Coleman	McCarthy	Vedder
Doolittle	Moore	Wagner
Emerson	Prince	Wagstaff
Gerard	Robertson	Wellman

Present, also, Messrs. Tracy, Olmstead and Tracy, of counsel for the prosecution, and Orlow W. Chapman and Jeremiah McGuire, Esqs., of counsel for the respondent.

G. W. Reid, witness for prosecution, examined.

John J. Cisco, witness for prosecution, sworn, relative to Third Avenue Savings Bank.

To the question by Mr. Tracy to the witness (Mr. Cisco), "Do you think when a bank known to be \$200,000 short in its assets, and largely short in income several months before, insolvent and unable to pay its existing depositors in full, it would be proper for any reason, public or private, for such bank to take money from other depositors?"

Mr. Gerard objected.

The President put the question whether the Senate would admit the testimony, and it was decided in the negative.

Frank Thompson sworn for prosecution, relative to Abingdon Square Savings Bank.

Mr. Schoonmaker objected to a line of examination of the witness Thompson, tending to determine the present value of property in Brooklyn, upon which the Abingdon Square Bank held mortgages.

The President put the question whether the Senate would admit such testimony, and it was decided in the negative.

At the conclusion of the examination of Mr. Thompson,

Mr. Bixby moved that the Senate take a recess until four o'clock.

The President put the question whether the Senate would agree to said motion, and it was decided in the negative.

#### FOR THE AFFIRMATIVE.

Baaden

Lamont

2

#### FOR THE NEGATIVE.

Bixby

Harris

Sayre

Bradley

Kennaday

Schoonmaker

Cole

McCarthy

Starbuck

Coleman

Moore

Wagner

Doolittle

Robertson

Wagstaff

Emerson

St. John

Wellman

Gerard

19

Mr. Tracy, of counsel for the prosecution, then announced that the prosecution would take up the case of the German Savings Bank of Morrisania.

Pending which,

Mr. Olmstead, of counsel for prosecution, read in evidence several bonds and mortgages referred to in the testimony of Mr. White, in the case of the Trades' Savings Bank.

On motion of Mr. Hammond the Senate took a recess until four o'clock.

#### FOUR O'CLOCK P. M.

The Senate again met.

The Clerk called the roll, when the following Senators answered to their names :

Baaden	Kennaday	Selkreg
Bixby	Lamont	Sprague
Bradley	McCarthy	Starbuck
Cole	Moore	Tobey
Coleman	Prince	Vedder
Doolittle	Robertson	Wagner
Emerson	St. John	Wagstaff
Gerard	Sayre	Wellman
Hammond	Schoonmaker	Woodin
Harris		

28

Mr. S. B. White, a witness for the prosecution, was examined in relation to the Trades' Savings Bank.

Letter of Samuel B. White, receiver (per J. W. Gedney, dated July 30, 1877), in response to certain questions of Senator Prince, was admitted in evidence. Exhibit 70.

Mr. Tracy announced that the prosecution would take up the case of the Loaners' Bank.

H. L. Lamb examined.

Letter of Senator Coleman, chairman Senate committee on banks, to D. C. Ellis, March 7, 1876. Exhibit 71.

Letter of Senator Coleman, chairman Senate committee on banks, to D. C. Ellis, March 21, 1876. Exhibit 72.

Letter of Chas. Tracy to D. C. Ellis, March 14, 1876. Exhibit 73.

Opinion of Attorney-General relative to Loaners' Bank, April, 1876. Exhibit 74.

To the question of Mr. McGuire, "What construction the Superintendent of the Bank Department placed upon the charter, as to enforcing the bank (Loaners') to make a report to the department?"

Mr. Tracy, for the prosecution, objecting,

After debate and hearing counsel and changing original interrogatory to the foregoing effect,

The President put the question whether the Senate would admit the question, and it was decided in the affirmative.

Letter of Geo. W. Reid to D. C. Ellis, April 6, 1876. Exhibit 75.

Opinion of William Tracy, relative to Loaners' Bank, April 13, 1876, Exhibit 76.

Letter of Dorr Russell, president, to D. C. Ellis, April 13, 1876. Exhibit 77.

Jeremiah Wintringham sworn for the prosecution.

Mr. McGuire objected to the testimony of this witness as to the assets of the Loaners' Bank, he being the second receiver, as furnishing any proof of what came into the hands of the first receiver.

The President put the question whether the Senate would admit the testimony, and it was decided in the affirmative.

Pending the examination of Mr. Wintringham,

Mr. Woodin moved that when the Senate adjourns, it adjourn to meet to-morrow morning at 10 o'clock.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Mr. Woodin moved that hereafter the daily sessions of the Senate commence at ten o'clock A. M.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

The hour of six o'clock having arrived, the President declared the Senate adjourned until to-morrow morning at ten o'clock.

SARATOGA SPRINGS, THURSDAY, *August 2, 1877.*

The Senate met pursuant to adjournment.

The Clerk called the roll, when the following Senators answered to their names:

Baaden	Harris	Schoonmaker <sup>1</sup>
Bixby	Kennaday	Selkreg
Bradley	Lamont	Sprague
Carpenter	Loomis	Starbuck
Cole	McCarthy	Tobey
Coleman	Moore	Vedder
Doolittle	Prince	Wagstaff
Emerson	Robertson	Wellman
Gerard	St. John	Woodin
Hammond	Sayre	

Present, also, Messrs. Tracy, Olmstead and Tracy, of counsel for the prosecution, and Orlow W. Chapman and Jeremiah McGuire, Esqs., of counsel for the respondent.



Marcus C. Hun sworn, on the part of the prosecution, relative to the People's Savings Bank.

Lemuel H. Clark sworn, on the part of the prosecution, relative to the Loaners' Bank.

Counsel for the respondent interposed a general objection to the line of inquiry proposed by the prosecution in the examination of the witness Clark.

After hearing counsel,

The President put the question whether the Senate would admit such proposed examination, and it was decided in the affirmative, as follows:

FOR THE AFFIRMATIVE.

Baaden	Hammond	St. John	
Bixby	Kennaday	Schoonmaker	
Carpenter	Loomis	Tobey	
Cole	Moore	Wagstaff	
Gerard	Robertson	Woodin	15

FOR THE NEGATIVE.

Doolittle	McCarthy	Selkreg	
Emerson	Sayre	Wellman	
Lamont			7

Edgar A. Werner examined in relation to the Loaners' Bank.

Isaac Smith examined.

H. L. Lamb examined.

At the conclusion of the examination of Mr. Lamb,

Mr. Tracy, of counsel for the prosecution, then stated that they would proceed to the case of the German Savings Bank of Morrisania.

H. L. Lamb examined.

The following documents were admitted in evidence:

Report of the German Savings Bank of Morrisania and accompanying schedules, January 1, 1875. Exhibit 78.

Letter of G. W. Reid to D. C. Ellis accompanying examination of German Savings Bank, September 24, 1875. Exhibit 79.

Letter of D. C. Ellis, Superintendent, to president of German Savings Bank of Morrisania, December 25, 1875. Exhibit 80.

Report of German Savings Bank, January 26, 1876. Exhibit 81.

Report of German Savings Bank, January 1, 1877. Exhibit 82, and Schedules B and E accompanying the same.

Letter of Earnest Hall, attorney, to D. C. Ellis, January 26, 1876. Exhibit 83.

Isaac Smith examined.

Pending the examination of Mr. Smith,  
Mr. Gerard moved that the Senate take a recess until 4 o'clock,  
P. M.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Whereupon the Senate took a recess.

---

#### FOUR O'CLOCK P. M.

The Senate again met.

The Clerk called the roll, when the following Senators answered to their names :

Bixby	Lamont	Selkreg
Bradley	Loomis	Sprague
Cole	McCarthy	Starbuck
Coleman	Moore	Tobey
Doolittle	Prince	Vedder
Emerson	Robertson	Wagstaff
Gerard	St. John	Wellman
Harris	Sayre	Woodin
Kennaday	Schoonmaker	

26

Examination of Isaac Smith continued.

William J. Best, receiver of the German Savings Bank, examined.

Pending the examination of Mr. Best,

Mr. Starbuck moved that the session be extended until 7 o'clock.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Examination of Mr. Best continued.

Mr. Best read from the minutes of the trustees of the bank.

Mr. Bixby moved that such portion of the testimony as relates to the convivial meeting of the trustees commemorative of the completion of the savings bank building be stricken from the record.

The President put the question whether the Senate would agree to said motion, and it was decided in the negative, as follows :

#### FOR THE AFFIRMATIVE.

Bixby	Kennaday	Vedder
Bradley	Sprague	Woodin
Coleman		

## FOR THE NEGATIVE.

Cole	McCarthy	Schoonmaker
Doolittle	Moore	Starbuck
Gerard	Robertson	Tobey
Harris	St. John	Wagstaff
Lamont	Sayre	

14

The following document was admitted in evidence :

Letter of D. C. Ellis to Jacob Heed, president German Savings Bank, December 25, 1875. Exhibit 85.

Mr. Woodin moved that the Senate do now adjourn.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Whereupon the Senate adjourned.

SARATOGA SPRINGS, FRIDAY, *August 3, 1877.*

The Senate met pursuant to adjournment.

The Clerk called the roll, when the following Senators answered to their names:

Baaden	Kennaday	Schoonmaker
Bixby	Lamont	Selkreg
Bradley	Loomis	Sprague
Cole	McCarthy	Starbuck
Coleman	Moore	Tobey
Doolittle	Prince	Vedder
Emerson	Robertson	Wagstaff
Gerard	St. John	Wellman
Hammond	Sayre	Woodin
Harris		

28

Also present, Messrs. Tracy, Olmstead and Tracy, of counsel for the prosecution, and Orlow W. Chapman and Jeremiah McGuire, Esqs., of counsel for the respondent.

G. W. Reid examined relative to the German Savings Bank of Morrisania.

Mr. Tracy then announced that the prosecution would take up the case of The New York State Loan and Trust Company.

H. L. Lamb examined.

The following documents were admitted in evidence:

Examiner's report of the condition of the New York State Loan and Trust Company, February 5, 6, 1875. Exhibit 85.

Commission of G. W. Reid and Willis S. Paine as examiners, December 18, 1875. Exhibit 86.

Henry J. Hubbard sworn for the prosecution.

Report of the New York State Loan and Trust Company and schedules, June 30, 1875. Exhibit 87.

Henry F. Spaulding, receiver of New York State Loan and Trust Company, sworn.

John H. Roberts sworn for prosecution in relation to the People's Savings Bank.

The following document was put in evidence :

Complaint. People v. The People's Savings Bank. Exhibit 88.

S. W. Swaney examined.

Mr. Tracy, of counsel for the prosecution, then took up the case of the Security Bank, New York city.

Isaac Smith examined.

Mr. Chapman objected to the reception of testimony in relation to the Security Bank—no specific charges being made in the Governor's messages relating to said Bank.

After hearing counsel,

The President put the question whether the Senate would receive such evidence, and it was decided in the affirmative, as follows :

#### FOR THE AFFIRMATIVE.

Bixby	Lamont	Schoonmaker	
Bradley	McCarthy	Starbuck	
Coleman	Moore	Tobey	
Doolittle	Prince	Vedder	
Emerson	Robertson	Wagstaff	
Harris	St. John	Wellman	
Kennaday	Sayre	Woodin	21

The following documents were admitted in evidence :

Report of Security Bank, January 1, 1875. Exhibit 89.

Commission and report of examiner of same bank, November 27, 1875. Exhibit 90.

Schedules G and E accompanying report of same bank for January 1, 1876. Exhibit 91.

G. W. Reid examined.

William M. Banks sworn for the prosecution.

The counsel for prosecution then took up the case of the Mutual Benefit Savings Bank.

Isaac Smith examined.

The following documents were put in evidence :

Report of examiner of Mutual Benefit Savings Bank, December, 1873. Exhibit 92.

Schedule G accompanying report of bank of January 1, 1874  
Exhibit 93.

Schedule G accompanying report of bank for July, 1874. Exhibit  
94.

Schedule G accompanying report of bank for January 1, 1875.  
Exhibit 95.

Report and commission of examiner in relation to same bank,  
December, 1875. Exhibit 96.

G. W. Reid examined.

W. F. Aldrich examined.

At the conclusion of the examination of Mr. Adrich, Mr. Tracy, of  
counsel for the State, announced that the prosecution rested their  
case.

On motion of Mr. Wagstaff, the Senate took a recess until four  
o'clock.

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#### FOUR O'CLOCK, P. M.

The Senate again met.

The Clerk called the roll, when the following Senators answered to  
their names :

Baaden	Harris	Selkreg	
Bixby	Kennaday	Sprague	
Bradley	Loomis	Starbuck	
Cole	McCarthy	Tobey	
Coleman	Moore	Vedder	
Doolittle	Prince	Wagstaff	
Gerard	Robertson	Wellman	
Hammond	St. John	Woodin	24

Mr. McGuire, of counsel for the respondent, requested, in order that  
the defense may have an opportunity to examine the testimony and  
documents in the case, that a recess be taken until Monday or Tues-  
day next, as to the Senate may seem most fit.

After debate,

Mr. Hammond moved that when the Senate adjourns to-day it ad-  
journ until Tuesday morning, at ten o'clock.

Mr. Woodin moved to amend so as to read that when the Senate ad-  
journs to-day it be until to-morrow morning at ten o'clock.

The President put the question whether the Senate would agree  
to the motion of Mr. Woodin, and it was decided in the negative, as  
follows :

## FOR THE AFFIRMATIVE.

Bradley	McCarthy	Sprague
Doolittle	Prince	Tobey
Harris	Robertson	Woodin
Loomis		

10

## FOR THE NEGATIVE.

Baaden	Hammond	Starbuck
Bixby	Kennaday	Vedder
Cole	Moore	Wagstaff
Coleman	St. John	Wellman
Gerard	Selkreg	

14

Mr. Vedder moved to amend by striking out the word "Tuesday," and inserting in lieu thereof the word "Monday."

The President put the question whether the Senate would agree to said motion of Mr. Vedder, and it was decided in the negative.

The President then put the question whether the Senate would agree to said motion of Mr. Hammond, and it was decided in the affirmative.

Isaac Smith recalled to correct his testimony.

Mr. Starbuck moved that the Senate do now adjourn.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Whereupon the Senate adjourned until Tuesday morning, at ten o'clock.

---

SARATOGA SPRINGS, TUESDAY, *August 7, 1877.*

The Senate met pursuant to adjournment.

The Clerk called the roll, when the following Senators answered to their names:

Baaden	Hammond	Schoonmaker
Bixby	Harris	Selkreg
Bradley	Kennaday	Starbuck
Carpenter	Lamont	Tobey
Cole	Loomis	Vedder
Coleman	McCarthy	Wagstaff
Emerson	Moore	Wellman
Gerard,	Prince	Woodin

24

Present, also, Messrs. Tracy, Olmstead and Tracy, of counsel for the

prosecution, and Orlow W. Chapman and Jeremiah McGuire, Esqs., of counsel for the respondent.

De Witt C. Ellis, the respondent, called and sworn.

Pending the examination of Mr. Ellis,

On motion of Mr. Woodin, the Senate took a recess until four o'clock P. M.

## FOUR O'CLOCK P. M.

The Senate again met.

The Clerk called the roll, when the following Senators answered to their names :

Baaden	Harris	Schoonmaker	
Bixby	Kennaday	Selkreg	
Bradley	Lamont	Starbuck	
Carpenter	Loomis	Tobey	
Cole	McCarthy	Vedder	
Coleman	Moore	Wagstaff	
Emerson	Prince	Wellman	
Gerard	Robertson	Woodin	24

Examination of De Witt C. Ellis continued.

To the question by Mr. McGuire : "In such cases, has it been the rule and action of the department to exercise your best judgment as to what course the superintendent should pursue ?"

Mr. Tracy objected.

After hearing counsel and debate thereon,

The President put the question whether the Senate would admit the question, and it was decided in the affirmative, as follows :

### FOR THE AFFIRMATIVE.

Bixby	Lamont	Robertson	
Bradley	Loomis	Selkreg	
Carpenter	McCarthy	Tobey	
Cole	Moore	Wellman	
Coleman	Prince	Woodin	
Kennaday			16

### FOR THE NEGATIVE.

Baaden	Schoonmaker	Vedder	
Gerard	Starbuck	Wagstaff	
Harris			7

The hour of six having arrived,

Mr. Woodin moved that the session be extended until seven o'clock.

Mr. Schoonmaker moved to amend by striking out the word "seven," and inserting in lieu thereof the word "eight."

Mr. Cole moved to amend by striking out the word "seven," and setting in lieu thereof the word "nine."

The President put the question whether the Senate would agree to said amendment of Mr. Cole, and it was decided in the negative, as follows :

FOR THE AFFIRMATIVE.

Baaden	Carpenter	Moore	
Bixby	Cole	Schoonmaker	
Bradley	Gerard		8

FOR THE NEGATIVE.

Coleman	McCarthy	Vedder	
Harris	Robertson	Wagstaff	
Kennaday	Starbuck	Wellman	
Lamont	Tobey	Woodin	12

Pending the original motion and amendment of Mr. Schoonmaker, Mr. Starbuck moved that the Senate do now adjourn.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Whereupon the Senate adjourned.

---

SARATOGA SPRINGS, WEDNESDAY, *August 8, 1877.*

The Senate met pursuant to adjournment.

The Clerk called the roll, when the following Senators answered to their names :

Baaden	Jacobs	Sayre
Bixby	Kennaday	Schoonmaker
Bradley	Lamont	Selkreg
Carpenter	Loomis	Starbuck
Cole	McCarthy	Tobey
Coleman	Moore	Vedder
Emerson	Prince	Wagstaff
Gerard	Robertson	Wellman
Hammond	St. John	Woodin
Harris		

Present, also, Messrs. Tracy, Olmstead and Tracy, of counsel for



the prosecution, and Orlow W. Chapman and Jeremiah McGuire, Esqs., of counsel for the respondent.

Examination of De Witt C. Ellis continued.

To the question by Mr. McGuire :

“ After learning the condition of the market, and your conversation with the gentlemen mentioned by you, did you, in fact, believe that the closing of the Third Avenue Savings Bank, at that time, would be disastrous to the financial interests of the city of New York? ”

Mr. Tracy objected, as being leading and immaterial.

The President put the question whether the Senate would admit said question, and it was decided in the affirmative.

Pending the conclusion of the examination of Mr. Ellis,

On motion of Mr. Kennaday, the Senate took a recess until four o'clock.

---

#### FOUR O'CLOCK P. M.

The Senate again met.

The Clerk called the roll, when the following Senators answered to their names :

Bixby	Jacobs	Sayre
Bradley	Kennaday	Schoonmaker
Carpenter	Lamont	Selkreg
Cole	Loomis	Starbuck
Coleman	McCarthy	Tobey
Emerson	Moore	Vedder
Gerard	Prince	Wagstaff
Hammond	Robertson	Wellman
Harris	St. John	Woodin

27

Examination of De Witt C. Ellis continued.

At the conclusion of the examination of Mr. Ellis,

On motion of Mr. Bixby, the Senate adjourned.

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#### SARATOGA SPRINGS, THURSDAY, *August 9, 1877.*

The Senate met pursuant to adjournment.

The Clerk called the roll, and the following Senators answered to their names :

Baaden	Jacobs	Sayre
Bixby	Kennaday	Schoonmaker
Bradley	Lamont	Selkreg
Carpenter	Loomis	Starbuck

Cole	McCarthy	Tobey
Coleman	Moore	Vedder
Emerson	Prince	Wagstaff
Gerard	Robertson	Wellman
Hammond	St. John	Woodin
Harris		

28

Present, also, Messrs. Tracy, Olmstead and Tracy, of counsel for the prosecution, and Orlow W. Chapman and Jeremiah McGuire, Esqs., of counsel for the respondent.

Henry L. Lamb examined on the part of the respondent.

Edgar A. Werner examined on the part of the respondent.

The following document was admitted in evidence :

Complaint. Thomas Flynn v. The Third Avenue Savings Bank.  
Exhibit 97.

Mr. Chapman here rested the case on the part of the respondent.

The President announced the case as closed.

Mr. Woodin moved that the Senate do now adjourn to meet at Albany on Tuesday next at ten o'clock.

Mr. Kennaday moved to amend by striking out the word "Albany," and inserting in lieu thereof the word "Saratoga."

The President put the question whether the Senate would agree to said motion of Mr. Kennaday, and it was decided in the negative, as follows :

#### FOR THE AFFIRMATIVE.

Baaden	Kennaday	Tobey
Bixby	Moore	Vedder
Gerard	Prince	Wagstaff
Hammond	Schoonmaker	Wellman
Jacobs	Starbuck	

14

#### FOR THE NEGATIVE.

Bradley	Harris	St. John
Carpenter	Lamont	Sayre
Cole	Loomis	Selkreg
Coleman	McCarthy	Woodin
Emerson	Robertson	

14

The President voting in the negative.

Mr. Gerard moved to reconsider the vote by which said motion to amend was disagreed to.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Mr. Prince moved to amend so as to read "that the Senate adjourn until Saturday, at ten o'clock."

Mr. Robertson moved to amend by striking out the word "Saturday," and inserting in lieu thereof the word "to-morrow."

The President put the question whether the Senate would agree to said motion of Mr. Robertson, and it was decided in the negative, as follows:

FOR THE AFFIRMATIVE.

Bradley	McCarthy	Sayre	
Coleman	Robertson	Schoonmaker	
Harris	St. John	Starbuck	9

FOR THE NEGATIVE.

Baaden	Jacobs	Selkreg	
Bixby	Kennaday	Tobey	
Carpenter	Lamont	Vedder	
Cole	Loomis	Wagstaff	
Emerson	Moore	Wellman	
Gerard	Prince	Woodin	
Hammond			19

Pending original motion of Mr. Woodin, and amendments,

Mr. Hammond moved that the Senate do now adjourn until Monday next, at four o'clock.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Whereupon the Senate adjourned.

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SARATOGA SPRINGS, MONDAY, *August 13, 1877.*

The Senate met pursuant to adjournment.

The Clerk called the roll, when the following Senators answered to their names:

Baaden	Hammond	Robertson	
Bixby	Harris	St. John	
Bradley	Jacobs	Sayre	
Carpenter	Kennaday	Schoonmaker	
Cole	Lamont	Selkreg	
Coleman	Loomis	Sprague	
Doolittle	McCarthy	Starbuck	
Emerson	Moore	Wellman	
Gerard	Prince	Woodin	27

Present, also, Messrs. Tracy, Olmstead and Tracy, of counsel for the prosecution, and Orlow W. Chapman and Jeremiah McGuire, Esqs., of counsel for the respondent.

The President presented the following :

ROUND LAKE CAMP-MEETING ASSOCIATION, }  
ROUND LAKE, August 13, 1877. }

*To the Hon. the President of the Senate :*

SIR.—The Round Lake Camp-meeting Association hereby respectfully and cordially invite the members of the Senate, together with its officers and counsel on both sides, to visit their grounds at such time as they may choose. The association will place a palace car at their disposal for the excursion ; and,

With much respect,

I am yours, etc.,

JOSEPH HILLMAN,

*Pres't Round Lake Camp-meeting Ass'n.*

Mr. Coleman moved that the invitation be accepted.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Mr. Chapman, of counsel for the respondent, requested that a resolution to the following effect be adopted by the Senate :

*Resolved*, That, in the argument of the case of the People of the State of New York against De Witt C. Ellis, one counsel for the prosecution be heard in opening the case for the People, and that one counsel be heard for the respondent, and that one counsel for the prosecution be heard in conclusion.

Mr. Gerard moved that the resolution, as read, be adopted.

After debate,

The President put the question whether the Senate would agree to said resolution, and it was decided in the affirmative.

On motion of Mr. Schoonmaker, and by unanimous consent, Rule VII was amended so as to read as follows :

“VII. Upon the closing of the proofs upon this hearing, each Senator shall be required to answer affirmatively or negatively the two following questions :

“*First*. Was the respondent guilty of culpable negligence in the performance of his official duty as Superintendent of the Bank Department in regard to any of the banks, and in any of the respects mentioned in the charges contained in and accompanying and referred to by the messages transmitted by his Excellency the Governor to the Senate, bearing date the 5th and the 23d days of April, 1877 ?

"*Second.* Shall the Superintendent of the Bank Department be removed from his office ?

"Each Senator, when so questioned, shall rise in his place and answer 'Aye' or 'Nay,' and when the division list of the Senate shall have been gone through with, the result shall be announced, and shall be entered upon the records of the Senate; and the final judgment of the Senate shall be certified to the Governor by the President and Clerk of the Senate."

Mr. Tracy, of counsel for the State, then proceeded with the opening argument of the case on the part of the prosecution.

Before concluding which,

On motion of Mr. Prince, the Senate adjourned.

SARATOGA SPRINGS, TUESDAY, *August 14, 1877.*

The Senate met pursuant to adjournment.

The Clerk called the roll, when the following Senators answered to their names :

Baaden	Harris	Sayre
Bixby	Jacobs	Schoonmaker
Bradley	Kennaday	Selkreg
Carpenter	Lamont	Sprague
Cole	Loomis	Starbuck
Coleman	McCarthy	Tobey
Doolittle	Moore	Vedder
Emerson	Prince	Wagstaff
Gerard	Robertson	Wellman
Hammond	St. John	Woodin
		30

Present, also, Messrs. Tracy, Olmstead and Tracy, of counsel for the prosecution, and Orlow W. Chapman and Jeremiah McGuire, Esqs., of counsel for the respondent.

Mr. Coleman offered the following :

*Resolved*, That the Senate adjourn to-morrow at two o'clock, P. M., to meet the next day at the usual hour.

The President put the question whether the Senate would agree to said resolution, and it was decided in the affirmative.

Mr. Tracy, of counsel for the State, then continued his argument on the part of the prosecution.

Before concluding,

On motion of Mr. Starbuck, the Senate took a recess until four o'clock, P. M.

## FOUR O'CLOCK, P. M.

The Senate again met.

The Clerk called the roll, when the following Senators answered to their names :

Baaden	Harris	Sayre	
Bixby	Jacobs	Schoonmaker	
Bradley	Kennaday	Selkreg	
Carpenter	Lamont	Sprague	
Cole	Loomis	Starbuck	
Coleman	McCarthy	Tobey	
Doolittle	Moore	Vedder	
Emerson	Prince	Wagstaff	
Gerard	Robertson	Wellman	
Hammond	St. John	Woodin	30

The opening argument, on the part of the prosecution, concluded by Mr. Olmstead.

On motion of Mr. Bixby, the Senate adjourned.

SARATOGA SPRINGS, WEDNESDAY, *August 15, 1877.*

The Senate met pursuant to adjournment.

The Clerk called the roll, when the following Senators answered to their names :

Baaden	Harris	Sayre	
Bixby	Jacobs	Schoonmaker	
Bradley	Kennaday	Selkreg	
Carpenter	Lamont	Sprague	
Cole	Loomis	Starbuck	
Coleman	McCarthy	Tobey	
Doolittle	Moore	Vedder	
Emerson	Prince	Wagstaff	
Gerard	Robertson	Wellman	
Hammond	St. John	Woodin	30

Present, also, Messrs. Tracy, Olmstead and Tracy, of counsel for the prosecution, and Orlow W. Chapman and Jeremiah McGuire, Esqs., of counsel for the respondent.

Mr. Chapman, of counsel for the respondent, then proceeded with the argument on the part of the defense.

Pending which,

On motion of Mr. Gerard, the Senate took a recess for ten minutes.

At the expiration of which time the Senate reassembled, and Mr. Chapman continued his argument.

Before concluding, the hour of two o'clock having arrived, the President declared the Senate adjourned until to-morrow at ten o'clock.

SARATOGA SPRINGS, THURSDAY, *August 16, 1877.*

The Senate met pursuant to adjournment.

The Clerk called the roll, when the following Senators answered to their names :

Baaden	Harris	Sayre	
Bixby	Jacobs	Schoonmaker	
Bradley	Kennaday	Selkreg	
Carpenter	Lamont	Sprague	
Cole	Loomis	Starbuck	
Coleman	McCarthy	Tobey	
Doolittle	Moore	Vedder	
Emerson	Prince	Wagstaff	
Gerard	Robertson	Wellman	
Hammond	St. John	Woodin	30

Present, also, Messrs. Tracy, Olmstead and Tracy, of counsel for the prosecution, and Orlow W. Chapman and Jeremiah McGuire, Esqs., of counsel for the respondent.

Mr. Chapman concluded his argument on the part of the respondent, and was followed by Mr. McGuire, also, on the part of the respondent.

Before concluding,

On motion of Mr. Woodin, the Senate took a recess until four o'clock.

#### FOUR O'CLOCK P. M.

The Senate again met.

The Clerk called the roll, when the following Senators answered to their names :

Baaden	Harris	Sayre
Bixby	Jacobs	Schoonmaker

Bradley	Kennaday	Selkreg	
Carpenter	Lamont	Sprague	
Cole	Loomis	Starbuck	
Coleman	McCarthy	Tobey	
Doolittle	Moore	Vedder	
Emerson	Prince	Wagstaff	
Gerard	Robertson	Wellman	
Hammond	St. John	Woodin	30

Mr. Jacobs offered the following:

*Resolved*, That the Senate take a recess at six o'clock till eight o'clock this evening.

The President put the question whether the Senate would agree to said resolution, and it was decided in the affirmative as follows:

FOR THE AFFIRMATIVE.

Coleman	Robertson	Sprague	
Jacobs	St. John	Wagstaff	
Lamont	Sayre	Wellman	
Loomis	Schoonmaker	Woodin	
McCarthy			13

FOR THE NEGATIVE.

Baaden	Gerard	Moore	
Bixby	Hammond	Prince	
Cole	Harris	Starbuck	
Emerson	Kennaday	Vedder	12

Mr. McGuire then continued his argument on the part of the respondent.

Pending which,

Mr. Vedder moved to reconsider the vote by which the motion of Mr. Jacobs that the Senate take a recess at six o'clock until eight o'clock this evening was agreed to.

Pending which, and after debate,

Mr. Harris moved that the Senate do now adjourn.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative, as follows:

FOR THE AFFIRMATIVE.

Baaden	Harris	Sprague	
Bixby	Kennaday	Starbuck	
Cole	Moore	Vedder	
Emerson	Prince	Wagstaff	
Gerard	Selkreg	Wellman	
Hammond			



## FOR THE NEGATIVE.

Bradley	Lamont	Sayre
Carpenter	Loomis	Schoonmaker
Coleman	Robertson	Tobey
Doolittle	St. John	Woodin
Jacobs		

13

Whereupon the Senate adjourned until to-morrow morning at ten o'clock.

---

SARATOGA SPRINGS, FRIDAY, *August 17, 1877.*

The Senate met pursuant to adjournment.

The Clerk called the roll, when the following Senators answered to their names :

Baaden	Harris	Sayre
Bixby	Jacobs	Schoonmaker
Bradley	Kennaday	Selkreg
Carpenter	Lamont	Sprague
Cole	Loomis	Starbuck
Coleman	McCarthy	Tobey
Doolittle	Moore	Vedder
Emerson	Prince	Wagstaff
Gerard	Robertson	Wellman
Hammond	St. John	Woodin

30

Present, also, Messrs. Tracy, Olmstead and Tracy, of counsel for the prosecution, and Orlow W. Chapman and Jeremiah McGuire, Esqs., of counsel for the respondent.

Mr. Harris offered the following :

*Resolved*, That 500 copies of the Journal of the Senate and testimony taken before the Senate in the trial of the charges against De Witt C. Ellis, together with the testimony taken by the Senate committee on banks, be printed and bound, and that the Clerk cause an index thereof to be made and printed therewith ; the printing to be done under the supervision and direction of the Clerk of the Senate, and that the same be distributed by him to the Senators, officers, Mr. Ellis, and the counsel engaged in the case.

The President put the question whether the Senate would agree to said resolution, and it was decided in the affirmative, as follows :

## FOR THE AFFIRMATIVE.

Baaden	Harris	Robertson	
Bradley	Jacobs	Selkreg	
Carpenter	Kennaday	Sprague	
Cole	Lamont	Starbuck	
Coleman	Loomis	Vedder	
Doolittle	McCarthy	Wellman	
Gerard	Moore	Woodin	21

Mr. McGuire continued the argument on the part of the respondent

At the conclusion of the argument of Mr. McGuire,

Mr. Gerard moved that the Senate take a recess for ten minutes.

The President put the question whether the Senate would agree to said motion, and it was decided in the negative.

Mr. Tracy, of counsel for the State, then proceeded with the closing argument on the part of the prosecution.

Before concluding, the hour of two o'clock having arrived, the Senate took a recess until four o'clock.

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FOUR O'CLOCK P. M.

The Senate again met.

The Clerk called the roll, when the following Senators answered to their names.

Baaden	Kennaday	Schoonmaker	
Bixby	Lamont	Selkreg	
Bradley	Loomis	Sprague	
Carpenter	McCarthy	Starbuck	
Cole	Moore	Vedder	
Coleman	Prince	Wagstaff	
Gerard	Robertson	Wellman	
Hammond	St. John	Woodin	
Harris	Sayre		26

Mr. Tracy concluded the argument on the part of the prosecution.

On motion of Mr. Robertson, and by unanimous consent, the rules were suspended, the Journal Clerk was directed to be present during the executive session.

Mr. Jacobs moved that the Senate do now go into executive session.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

The President directed the Clerk to call the roll, when the following Senators answered to their names:

Baaden	Jacobs	Sayre
Bixby	Kennaday	Schoonmaker
Bradley	Lamont	Sprague
Carpenter	Loomis	Starbuck
Cole	McCarthy	Tobey
Coleman	Moore	Vedder
Emerson	Prince	Wagstaff
Gerard	Robertson	Wellman
Hammond	St. John	Woodin
Harris		

28

Mr. Sprague moved that the Senate do now adjourn.

The President put the question whether the senate would agree to said motion, and it was decided in the negative, as follows:

FOR THE AFFIRMATIVE.

Baaden	Hammond	Sprague
Bixby	Kennaday	Vedder
Cole	Prince	Wellman
Emerson		

10

FOR THE NEGATIVE.

Bradley	Lamont	Sayre
Carpenter	Loomis	Schoonmaker
Coleman	McCarthy	Tobey
Gerard	Moore	Wagstaff
Harris	Robertson	Woodin
Jacobs	St. John	

17

Mr. Cole moved that the Sergeant-at-arms be directed to notify Senators absent from the chamber, and now in the village, that the Senate is in executive session.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Mr. Jacobs moved that the Senate take a recess for fifteen minutes.

The President put the question whether the Senate would agree to said motion, and it was decided in the negative.

Mr. Woodin moved that further proceedings be suspended until the absent Senators appear in the chamber.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Mr. Jacobs moved to reconsider the vote by which said motion was agreed to.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Mr. Hammond moved that the Senate do now adjourn.

The President put the question whether the Senate would agree to said motion, and it was decided in the negative.

Mr. Harris moved that the Clerk proceed to call the roll of Senators at six o'clock.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Messrs. Selkreg, Doolittle and Morrissey having appeared in the Senate chamber,

Mr. Jacobs moved to reconsider the vote by which the Clerk was directed to call the roll at six o'clock.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

The President then put the question whether the Senate would agree to said motion of Mr. Harris that the Clerk call the roll at six o'clock, and it was decided in the negative.

The President then put the question : " Was the respondent guilty of culpable negligence in the performance of his official duty as Superintendent of the Bank Department in regard to any of the banks, and in any of the respects mentioned in the charges contained in and accompanying and referred to by the messages transmitted by his Excellency the Governor to the Senate, bearing date the 5th and the 23d days of April, 1877 ? "

Whereupon the Clerk called the roll, and each Senator rose in his place, and answered as follows :

#### FOR THE AFFIRMATIVE.

Baaden	Jacobs	Sayre
Bixby	Lamont	Schoonmaker
Bradley	Loomis	Sprague
Coleman	McCarthy	Starbuck
Gerard	Morrissey	Tobey
Hammond	Robertson	Wagstaff
Harris	St. John	Woodin

21

#### FOR THE NEGATIVE.

Carpenter	Kennaday	Selkreg
Cole	Moore	Vedder
Doolittle	Prince	Wellman
Emerson		

10

The President then put the question : " Shall the Superintendent of the Bank Department be removed from his office ? "

Whereupon the Clerk called the roll, and each Senator rose in his place and answered as follows :

FOR THE AFFIRMATIVE.

Baaden	Jacobs	Sayre	
Bixby	Lamont	Schoonmaker	
Bradley	Loomis	Sprague	
Coleman	McCarthy	Starbuck	
Gerard	Morrissey	Tobey	
Hammond	Robertson	Wagstaff	
Harris	St. John	Woodin	21

FOR THE NEGATIVE.

Carpenter	Kennaday	Selkreg	
Cole	Moore	Vedder	
Doolittle	Prince	Wellman	
Emerson			10

The doors were then opened, and the President announced the foregoing result.

Mr. Prince offered the following :

*Resolved*, That the Senate, after hearing all the testimony presented on the investigation in the case of De Witt C. Ellis, just concluded, concur with the Governor in the opinion that Mr. Ellis has not been guilty of any intentional wrong in his conduct of the Bank Department.

The President put the question whether the Senate would agree to said resolution, and it was decided in the affirmative.

Mr. Woodin moved that the Clerk of the Senate be directed to communicate to the Governor by telegraph the action of the Senate in the matter of the trial of De Witt C. Ellis, Superintendent of the Bank Department, and inform his Excellency that the Senate awaits his further pleasure.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Mr. Cole moved that the Senate do now adjourn until to-morrow morning at ten o'clock.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

Whereupon the Senate adjourned.

SARATOGA SPRINGS, SATURDAY, *August 18, 1877.*

The Senate met pursuant to adjournment.

The Clerk read the following telegram :

ALBANY, N. Y., *August 18, 1877.*

TO HENRY A. GLIDDEN, *Clerk of the Senate :*

Your dispatch is received. I have no further business to lay before the Senate at its present session.

L. ROBINSON.

Mr. Harris offered the following :

*Resolved*, That the rule of the Senate as to the obligation of secrecy in executive session be so far modified as to remove the obligation of secrecy with reference to the proceedings in said trial.

The President put the question whether the Senate would agree to said resolution, and it was decided in the affirmative.

Mr. Wagstaff moved that the Senate do now adjourn *sine die*.

The President put the question whether the Senate would agree to said motion, and it was decided in the affirmative.

The President then addressed the Senate as follows :

SENATORS. — I will not detain you by any formal address at this time, when our official relations are about to terminate.

I thank you for your courtesies so frequently shown. I hope that I may be permitted always to maintain friendly relations with each of you, and I sincerely wish you prosperity and happiness, and an abundant share of public honor.

In pursuance of an order of the Senate, I declare the Senate adjourned *sine die*.

HENRY A. GLIDDEN,  
*Clerk.*

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